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DAVEY TREE SURGERY COMPANY and
THE DAVEY TREE EXPERT COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE DIAZ HERMOSILLO, OSCAR
DIAZ HERMOSILLO, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

DAVEY TREE SURGERY COMPANY, an
Ohio Corporation; THE DAVEY TREE
EXPERT COMPANY, an Ohio
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

(Removed from Santa Clara Superior Court Case
No. 17CV320135)

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1332(d)(2)
(CAFA)**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS JOSE
2 DIAZ HERMOSILLO, OSCAR DIAZ HERMOSILLO, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants DAVEY TREE SURGERY COMPANY and
4 THE DAVEY TREE EXPERT COMPANY (“Defendants”)¹ hereby remove the above-entitled
5 action from the Superior Court of the State of California, County of Santa Clara, to the United States
6 District Court for the Northern District of California, pursuant to 28 U.S.C. sections 1332(d),
7 1441(a), and 1446 on the following grounds:

8 **STATEMENT OF JURISDICTION**

9 1. This Court has original jurisdiction over this action under the Class Action Fairness
10 Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d)(2). In relevant part, CAFA grants district courts
11 original jurisdiction over civil class actions filed under federal or state law in which any member of a
12 class of plaintiffs is a citizen of a state different from any defendant and where the amount in
13 controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000,
14 exclusive of interest and costs. CAFA authorizes removal of such actions in accordance with 28
15 U.S.C. § 1446.

16 2. This Court has jurisdiction over this case under CAFA, 28 U.S.C. § 1332(d), and
17 this case may be removed pursuant to the provisions of 28 U.S.C. § 1441(a), in that it is a civil action
18 wherein: (1) the proposed class contains at least 100 members; (2) Defendants are not a state, state
19 official, or other governmental entity; (3) there is diversity between at least one class member and a
20 defendant; and (4) the amount in controversy for all class members exceeds \$5,000,000.

21 3. CAFA’s diversity requirement is satisfied when at least one plaintiff is a citizen of a
22 state in which the defendant is not a citizen. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1453.

23 4. As set forth below, this case meets all of CAFA’s requirements for removal and is
24 timely and properly removed by the filing of this Notice.

25 **VENUE**

26 5. This action was filed in the Superior Court for the State of California in the County

27
28 ¹ Defendant Davey Tree Surgery Company did not employ Plaintiffs. Plaintiffs were employed by Defendant The Davey Tree Expert Company.

of Santa Clara Superior Court. Venue properly lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. sections 84, 1391, 1441, and 1446.

6. The named Defendants consent to removal.

PLEADINGS, PROCESS, AND ORDERS

7. On December 7, 2017, Plaintiffs, on behalf of themselves and all others similarly situated, commenced this action by filing a class action complaint in the Superior Court of California, County of Santa Clara, entitled *Jose Diaz Hermosillo, Oscar Diaz Hermosillo, on behalf of themselves and all others similarly situated v. Davey Tree Surgery Company, an Ohio Corporation; and Davey Tree Expert Company, an Ohio Corporation; and Does 1 through 50, inclusive*, designated as Case No. 17CV320135 (“Complaint”). A true and correct copy of the Complaint is attached to this Notice of Removal as **Exhibit A**.

8. On December 19, 2017, Defendant, The Davey Tree Expert Company, was served with the Summons, Complaint, and Civil Case Cover Sheet. True and correct copies of these documents served on Defendant are attached to this Notice of Removal as **Exhibit B**.

9. On December 19, 2017, Defendant, Davey Tree Surgery Company, was served with the Summons, Complaint, and Civil Case Cover Sheet. True and correct copies of these documents served on Defendant are attached to this Notice of Removal as **Exhibit C**.

10. To Defendants’ knowledge, no further process, pleadings, or orders have been served.

TIMELINESS OF REMOVAL

11. This Notice of Removal is timely. Under 28 U.S.C. § 1446(b), the notice of removal of a civil action must be filed within thirty (30) days after service of process. 28 U.S.C. § 1446(b); *see Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day removal period runs from the service of the summons and complaint).

12. While the Complaint is removable, as demonstrated in detail below, the face of Plaintiffs’ pleading does not contain sufficient facts to trigger removal as set forth in 28 U.S.C. § 1446(b). Such a pleading may be removed at any time after the commencement of the action based upon a defendant’s own investigation of the relevant jurisdictional facts. *Roth v. CHA Hollywood*

1 *Med. Ctr.*, 720 F.3d 1121, 1126 (9th Cir. 2013) (where neither the initial pleading nor any other
 2 paper indicates that the case is removable, neither of the two thirty-day removal periods are triggered
 3 under 28 U.S.C. §1446, and a defendant may remove the action at any time based upon its own
 4 investigation of the claims asserted); *see also Kuxhausen v. BMW Fin'l Services NA LLC*, 707 F3d
 5 1136, 1139 (9th Cir. 2013) (defendant's removal was timely even though it was removed
 6 approximately six (6) months after the filing of the operative complaint because the face of
 7 plaintiff's pleading did not contain facts sufficient to support diversity jurisdiction under the CAFA).

8 **PROPOSED CLASS CONTAINS AT LEAST 100 MEMBERS**

9 13. Plaintiffs seek to represent "[a]ll non-exempt Tree Trimmers employees (including
 10 but not limited to those holding the job titles of "laborer," "groundman," "apprentice climber,"
 11 "climber," "climbing arborist," "climbing arborist trainee," and "trimmer") who were employed by
 12 Defendants in the State of California at any time during the four years preceding the filing of this
 13 Complaint" ("Class Period"). (Compl. ¶ 29.)

14 14. Plaintiffs allege that, during "the relevant Class Period Defendants DTSC and
 15 DTEC have employed hundreds of employees in California in positions." (Compl. ¶ 6.) Although
 16 Defendant Davey Tree Surgery Company never employed Plaintiffs, Defendants do not dispute that
 17 there are more than 100 putative class members that work for Defendant The Davey Tree Expert
 18 Company.

19 15. Further, Plaintiffs seek to represent a class consisting of "all non-exempt Tree
 20 Trimmers employees . . . employed by Defendants" during the Class Period. According to
 21 Plaintiffs' definition, to date, there are approximately 2,257 putative class members Plaintiffs seek to
 22 include in this case. *See* Declaration of Rene Tatka in Support of Notice of Removal ("Tatka Decl.")
 23 ¶ 3.

24 **DEFENDANTS ARE NOT GOVERNMENTAL ENTITIES**

25 16. Under 28 U.S.C. § 1332(d)(5)(A), CAFA does not apply to class actions where
 26 "primary defendants are State, State Officials, or other governmental entities against whom the
 27 district court may be foreclosed from ordering relief."

28 17. Defendants are corporations engaged in the business of providing a wide range of

1 arboriculture, horticulture, and environmental and consulting services to private companies, public
 2 utilities, local, state, and federal agencies, and various industrial, commercial, and residential
 3 customers. Tatka Decl. ¶ 2; Compl. ¶ 24. Neither Defendant is a state, state official, or other
 4 governmental entity.

5 **PLAINTIFFS' CITIZENSHIP IS DIVERSE FROM DEFENDANTS**

6 18. CAFA's minimal diversity requirement is satisfied when "any member of a class of
 7 plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §§ 1332(d)(2)(A), 1453(b).
 8 In a class action, only citizenship of named parties is considered for diversity purposes and not the
 9 citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969). Minimal diversity
 10 of citizenship exists here because Plaintiffs and Defendants are citizens of different states.

11 19. **Plaintiffs are citizens of California.** For diversity purposes, a person is a "citizen"
 12 of the state in which he or she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088,
 13 1090 (9th Cir. 1983); *see also LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship
 14 determined at the time the lawsuit is filed); *see also Lundquist v. Precision Valley Aviation, Inc.*, 946
 15 F.2d 8, 10 (1st Cir. 1991). A person's domicile is the place he or she resides with the intention to
 16 remain, or to which he or she intends to return. *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
 17 857 (9th Cir. 2001).

18 20. At all relevant times, Plaintiffs were and are citizens of the State of California. *See*
 19 Tatka Decl. ¶ 4. *See Lew v. Moss*, 797 F.2d 747, 751 (9th Cir. 1986) (residency can create a
 20 rebuttable presumption of domicile supporting diversity of citizenship); *see also State Farm Mut.*
 21 *Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court
 22 complaint of residency "created a presumption of continuing residence in [state] and put the burden
 23 of coming forward with contrary evidence on the party seeking to prove otherwise"); *see also Smith*
 24 *v. Simmons*, 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal. 2008) (place of residence provides
 25 "prima facie" case of domicile). Accordingly, Plaintiffs are citizens of the state of California for
 26 purposes of analyzing diversity jurisdiction.

27 21. **Defendant Davey Tree Surgery Company is a citizen of Ohio.** For purposes of
 28 28 U.S.C. § 1332, a corporation is deemed to be a citizen of any State by which it has been

1 incorporated and of the State where it has its principal place of business. *See* 28 U.S.C. §
 2 1332(c)(1). As explained by the United States Supreme Court in *Hertz Corp. v. Friend*, 559 U.S. 77,
 3 77 (2010), “the phrase ‘principal place of business’ in § 1332(c)(1) refers to the place where a
 4 corporation’s high level officers direct, control, and coordinate the corporation’s activities . . . We
 5 believe that the ‘nerve center,’ will typically be found at a corporate headquarters.”

6 22. At the time the action was commenced, Defendant Davey Tree Surgery Company
 7 was, and still is, incorporated under the laws of the State of Ohio with its principal place of business
 8 in Kent, Ohio, and, therefore, is a citizen of the State of Ohio. *See* Compl. ¶¶ 4-5; Tatka Decl. ¶ 5.
 9 Thus, Defendant Davey Tree Surgery Company is not a citizen of the State of California.

10 23. **Defendant The Davey Tree Expert Company is a citizen of Ohio.** At the time
 11 the action was commenced, Defendant The Davey Tree Expert Company was, and still is,
 12 incorporated under the laws of the State of Ohio with its principal place of business in Kent, Ohio.
 13 *See* Compl. ¶¶ 4-5; Tatka Decl. ¶ 6. Thus, Defendant The Davey Tree Expert Company is not a
 14 citizen of the State of California.

15 24. Defendants “Does 1 through 50” are wholly fictitious. The Complaint does not set
 16 forth the identity or status of any fictitious defendants, nor does it set forth any charging allegation
 17 against any fictitious defendants. Thus, pursuant to 28 U.S.C. § 1441(a), the citizenship of
 18 defendants sued under fictitious names must be disregarded for purposes of determining diversity
 19 jurisdiction and cannot destroy the diversity of citizenship between the parties in this action. *See*
 20 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690–91 (9th Cir. 1998).

21 25. This action satisfies diversity requirements because Plaintiffs are citizens of the
 22 State of California and Defendants are citizens of Ohio. Therefore, the minimal diversity
 23 requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied.

24 **AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000**

25 26. This Court has jurisdiction under the CAFA, which authorizes the removal of class
 26 actions in which, among the other factors mentioned above, the amount in controversy for all class
 27 members exceeds \$5,000,000. 28 U.S.C. § 1332(d). “The claims of the individual class members
 28 shall be aggregated to determine whether the matter in controversy exceeds” this amount. 28 U.S.C.

1 § 1332(d)(6).

2 27. The removal statute requires that a defendant seeking to remove a case to federal
3 court must file a notice “containing a short and plain statement of the grounds for removal.” 28
4 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135
5 S. Ct. 547, 554 (2014), recognized that, “as specified in §1446(a), a defendant’s notice of removal
6 need include only a plausible allegation that the amount in controversy exceeds the jurisdictional
7 threshold.” Only if the plaintiff contests or the court questions the allegations of the notice of
8 removal is supporting evidence required. *Id.* Otherwise “the defendant’s amount-in-controversy
9 allegation should be accepted” just as a plaintiff’s amount-in-controversy allegation is accepted
10 when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

11 28. Defendants deny the validity and merit of Plaintiffs’ alleged claims, the legal
12 theories upon which they are ostensibly based and the alleged claims for monetary and other relief
13 that flow therefrom. For purposes of removal only, however, and without conceding that Plaintiffs
14 or the putative class are entitled to any damages or penalties, it is readily apparent that the
15 aggregated claims of the putative class establish, by a preponderance of evidence, that the amount in
16 controversy well exceeds the jurisdiction minimum of \$5,000,000.

17 29. Here, Plaintiffs do not allege the amount in controversy in the Complaint.

18 30. Plaintiffs allege a cause of action for violation of the Unfair Competition Law
19 (“UCL”), Business and Professions Code §§ 17200, *et seq.* Compl. ¶¶ 88-93. Alleging a UCL
20 violation may extend the statute of limitations for Plaintiffs’ and the putative class’ overtime and
21 minimum wage claims from three to four years from the filing of the Complaint, which in this case,
22 extends the statute of limitations to December 7, 2013. *See* Cal. Bus. & Prof. Code § 17208; *Cortez*
23 *v. Purolater Air Filtration Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of
24 limitations for restitution of wages under the UCL).

25 31. Plaintiffs allege Defendants failed to pay Plaintiffs and putative class members all
26 wages owed because Defendants failed to pay prevailing wages, failed to pay for all hours worked,
27 failed to pay overtime and double-time wages, failed to provide meal and rest periods or
28 compensation in lieu of the alleged violations, failed to provide accurate wage statements, and failed

1 to pay all wages upon termination and failed to provide accurate wage statements. Compl. ¶¶ 1, 3.
 2 For these causes of action, Plaintiffs seek, among other relief, unpaid wages including regular wages,
 3 overtime, double-time wages, prevailing wages, compensation for missed meal and rest periods, and
 4 penalties for alleged inaccurate wage statements and late payment of wages. *Id.* ¶ 1, Prayer ¶¶ 3-17.

5 32. From December 7, 2013, to present, approximately 2,257 hourly, non-exempt
 6 employees worked at Davey Tree Surgery Company and The Davey Tree Expert Company. As a
 7 non-exempt hourly employee, Plaintiff Jose Diaz Hermosillo earned \$18.5 per hour, and Plaintiff
 8 Oscar Diaz Hermosillo earned \$21.6 per hour. The hourly rates, over the entire alleged class period,
 9 for the purported class members Plaintiffs seek to represent average \$23.07. Based on the available
 10 employment records, the time period Plaintiffs have placed at issue, and the number of employees at
 11 issue, Plaintiffs have placed approximately 234,410 work weeks in controversy.

12 33. Based on the available employment records from Defendants, and without waiving
 13 any defenses related to the fact that Defendant Davey Tree Surgery Company did not employ
 14 Plaintiffs, there are approximately 2,257 putative class members at issue for Plaintiffs' missed meal
 15 period and rest break claims with 234,410 work weeks in the alleged class period for each cause of
 16 action. While Defendants deny the validity and merit of Plaintiffs' missed meal period and rest
 17 break claims, for purposes of removal only, Defendants calculate that based on the hourly rates of
 18 pay for the putative class members and assuming one missed meal period and one missed rest break
 19 per week, the amount in controversy for each allegation is \$5,407,285, totaling \$10,814,570 for the
 20 meal period and rest break claims alone.

21 34. Based on the available employment records, there are approximately 2,257 putative
 22 class members at issue for Plaintiffs' overtime claim with 234,410 work weeks in the alleged class
 23 period. While Defendants deny the validity and merit of Plaintiffs' overtime claim, for purposes of
 24 removal only, estimating only one hour of overtime per week per putative class member for the class
 25 period, Defendants calculate an additional \$2,703,643 in controversy.

26 35. Plaintiffs also allege that Defendants failed to timely pay Plaintiffs and putative
 27 class members whose employment ended with the Defendants during the class period, as required by
 28 Labor Code § 203. Compl. ¶¶ 66-72. While Defendants deny the validity and merit of Plaintiffs'

1 waiting time penalties claims, for purposes of removal only, Defendants determined the amount in
 2 controversy by applying the maximum penalty authorized. There are approximately 797 putative
 3 class members who fall within the three year statute of limitations applicable to this claim (i.e. class
 4 period beginning December 7, 2014). Assuming an eight hour work day, the maximum thirty days
 5 allowed by statute, the amount in controversy on the waiting time penalty claims is approximately
 6 \$3,525,538.

7 36. Additionally, Plaintiffs allege that Defendants failed to maintain accurate itemized
 8 wage statements in violation of Labor Code § 226. Compl. ¶¶ 73-79. Plaintiffs allege the putative
 9 class members are entitled to amounts provided for under Labor Code section 226(e), Compl. ¶ 75:
 10 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
 11 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars per violation
 12 (\$4,000). While Defendants deny the allegations, given the one year statute of limitation applicable
 13 to section 226 claims (*i.e.* the class period beginning December 7, 2016), based on the available
 14 employment records, there are approximately 1,529 putative class members at issue for Plaintiffs’
 15 wage statement claim. Assuming that the putative class is paid weekly, the amount in controversy is
 16 \$5,075,450 for this claim.

17 37. Plaintiffs also seek recovery under the Private Attorneys General Act (“PAGA”).
 18 Compl. ¶¶ 95-98, Prayer ¶ 13. Plaintiffs seek penalties under the PAGA—\$100 for each aggrieved
 19 employee per pay period for the initial violation. Cal. Lab. Code § 2699(f). While Defendants deny
 20 the allegations, given the one year statute of limitation applicable to the PAGA claim (*i.e.* the class
 21 period beginning December 7, 2016), based on the available employment records, there are
 22 approximately 1,529 putative class members at issue and the amount in controversy is \$6,929,400
 23 for this claim.

24 38. Plaintiffs also seek attorneys’ fees and costs in their Complaint. *See* Compl., Prayer
 25 for Relief ¶ 16. It is well-settled that claims for statutory attorneys’ fees are to be included in the
 26 amount in controversy. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005),
 27 *cert. denied*, 127 S. Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th
 28 Cir. 1998) (attorneys’ fees may be taken into account to determine jurisdictional amounts). The

attorneys' fees benchmark in the Ninth Circuit is 25%. *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the 'bench mark' percentage for the fee award should be 25 percent." (citation omitted)); *Lo v. Oxnard Euro. Motors, LLC*, No. 11-CV-1009, 2012 US. Dist. LEXIS 73983, *8-9 (S.D. Cal. May 29, 2012) ("The Ninth Circuit has accepted as a benchmark for an attorneys' fees awards a twenty-five percent of the common fund recovery.")

39. Removal of this action is therefore proper as the aggregate value of Plaintiffs' class causes of action for unpaid overtime and minimum wage, unpaid meal and rest periods premiums, final wages not timely paid, non-compliant wage statements, and attorneys' fees is well in excess of the CAFA jurisdictional requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2).

NOTICE TO PLAINTIFFS AND STATE COURT

40. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Central District of California, written notice of such filing will be served by the undersigned on Plaintiffs' Counsel of Record and a copy of the Notice of Removal will be filed with the Clerk of the Superior Court of California, County of Santa Clara.

Dated: January 18, 2018

/s/ Billie D. Wenter
 BILLIE D. WENTER
 LITTLER MENDELSON, P.C.
 Attorneys for Defendants
 DAVEY TREE SURGERY COMPANY AND
 THE DAVEY TREE EXPERT COMPANY

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EXHIBIT A

E-FILED
12/7/2017 10:24 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
17CV320135
Reviewed By: R. Walker

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and the Plaintiff Class

11 IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13 (UNLIMITED JURISDICTION)
14

15 JOSE DIAZ HERMOSILLO, OSCAR DIAZ
16 HERMOSILLO on behalf of themselves and all
others similarly situated,

17
18 Plaintiffs,

19 vs.

20 DAVEY TREE SURGERY COMPANY, an
21 Ohio Corporation; THE DAVEY TREE
EXPERT COMPANY, an Ohio Corporation;
22 and DOES 1 through 50, inclusive,

23 Defendants.
24
25
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27
28

Case No.

17CV320135

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

DEMAND FOR JURY TRIAL

1 Representative Plaintiffs JOSE DIAZ HERMOSILLO and OSCAR DIAZ HERMOSILLO
2 complain and allege as follows:

3 **PRELIMINARY STATEMENT**

4 1. This is a class action, brought on behalf of Plaintiffs JOSE DIAZ HERMOSILLO
5 and OSCAR DIAZ HERMOSILLO ("Plaintiffs" or "Representative Plaintiffs") and all other
6 persons similarly situated (collectively "Class Members") who are or have been employed as non-
7 exempt tree care service employees (including but not limited to those holding the job titles of
8 "laborer," "groundman," "apprentice climber," "climber," "climbing arborist," "climbing arborist
9 trainee," and "trimmer") by Defendants DAVEY TREE SURGERY COMPANY ("DTSC"), THE
10 DAVEY TREE EXPERT COMPANY ("DTEC"), and DOES 1-50, inclusive (hereinafter,
11 collectively "Defendants") in California within the applicable Class Period (referred to herein as
12 "Class Members" or "Tree Trimmers"). Representative Plaintiffs, on behalf of themselves and the
13 Class Members, seek unpaid wages including regular wages, overtime wages, double-time wages,
14 prevailing wages, compensation for missed meal and rest periods, penalties for inaccurate wage
15 statements and late payment of wages, interest thereon, related penalties, injunctive and other
16 equitable relief, and reasonable attorneys' fees and litigation costs pursuant to, *inter alia*., Title 8 of
17 the California Code of Regulations, California Business and Professions Code sections 17200, *et*
18 *seq.*, California Code of Civil Procedure Section 1021.5, and various provisions of the California
19 Labor Code.

20 2. The "Class Period" is defined as the four years prior to the date on which this
21 Complaint was initially filed and continuing through the present time, based upon the allegation
22 that the violations of California's wage and hour laws, as described more fully below, have been
23 ongoing throughout that time.

24 3. During the Class Period, Representative Plaintiffs allege, on information and belief,
25 that Defendants have had a consistent policy of (1) unlawfully failing to pay Representative
26 Plaintiffs and Class Members prevailing wages, as required by California Labor Code Section
27 1771; (2) failing to pay Representative Plaintiffs and Class Members for all hours worked, by
28 including but not limited to shaving off hours worked by Representative Plaintiffs and members of

1 the class by rounding of their punch times; (3) failing to pay Representative Plaintiffs and Class
 2 Members overtime wages for more than 8 hours of work in a work-day and/or more than 40 hours
 3 in a work-week; (4) failing to pay Representative Plaintiffs and Class Members double-time wages
 4 for more than 12 hours of work in a work-day and for wages earned over 8 hours worked on the
 5 seventh day worked in a work-week; (5) unlawfully failing to provide Representative Plaintiffs and
 6 Class Members with timely, statutorily-mandated meal and rest periods and/or failing to properly
 7 compensate them for meal and rest period violations; (6) willfully failing to provide Representative
 8 Plaintiffs and Class Members with accurate semi-monthly itemized wage statements that correctly
 9 identified the name of the employer; (7) willfully failing to pay compensation owed in a prompt
 10 and timely manner to Representative Plaintiffs and Class Members whose employment with
 11 Defendants has terminated; and (8) violating California's Unfair Competition Law (the "UCL").

12 INTRODUCTION

13 4. Defendant DAVEY TREE SURGERY COMPANY ("DTSC") is a registered Ohio
 14 Corporation, who is a licensed and bonded contractor in the state of California performing
 15 professional tree services on public works projects in Santa Clara County.

16 5. Defendant THE DAVEY TREE EXPERT COMPANY ("DTEC") is a registered
 17 Ohio Corporation with its headquarters in Kent, Ohio, who is a licensed and bonded contractor in
 18 the state of California performing professional tree services on public works projects in Santa Clara
 19 County.

20 6. Representative Plaintiffs allege, based on information and belief, that during the
 21 relevant Class Period Defendants DTSC and DTEC have employed hundreds of employees in
 22 California in positions that did not, and currently do not, meet any known test for exemption from
 23 the payment of minimum and overtime wages, and/or the entitlement to accurate itemized wage
 24 statements and meal and rest periods. Representative Plaintiffs are also informed and believe and
 25 based thereon allege that Defendants DTSC and DTEC actively sought, engaged in, and employed
 26 Plaintiffs and similarly situated Class Members on public works projects subject to prevailing
 27 wage statutes.

28 7. Despite actual knowledge of these facts and legal mandates. Defendants had and

1 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
2 by electing not to pay prevailing wage rates, not to pay Representative Plaintiffs and class
3 members wages owed for all hours worked by, *inter alia*, "shaving" hours and rounding punch
4 times, not paying statutorily required regular and overtime wages as well as prevailing wages, not
5 providing off-duty, timely meal and rest periods or compensation therefore, not providing accurate
6 wage statements, and not providing all wages due and owing upon employees' termination in a
7 timely manner.

8 8. Representative Plaintiffs are informed and believe and, based thereon, allege that
9 officers and managing agents of defendant DTSC and DTEC, knew of these facts and legal
10 mandates yet, nonetheless, repeatedly authorized and/or ratified the violations of the laws cited
11 herein.

12 9. Despite Defendants' knowledge of Representative Plaintiffs and Class Members'
13 entitlement to prevailing wages, wages for all hours worked, premium wages for daily and weekly
14 overtime hours worked, meal and rest periods or break violation pay for all applicable work
15 periods, and accurate wage statements, Defendant failed to provide the same to Representative
16 Plaintiffs and Class Members, in violation of the California Labor Code and Business and
17 Professions Code, the applicable California Industrial Welfare Commission Wage Order and Title
18 8 of the California Code of Regulations. Moreover, Defendants failed to pay all final wages to
19 those Plaintiffs and Class Members whose employment has terminated.

20 10. This action is brought to redress and end this long-time pattern of unlawful conduct
21 once and for all. Despite actual knowledge of these facts and legal mandates, Defendants have and
22 continue to enjoy an advantage over their competition and a imposed a resultant disadvantage to its
23 workers by electing not to pay premium wages (e.g., overtime, double-time, prevailing wages,
24 meal and rest period wages) and/or penalties to which they are entitled (e.g., "waiting time,"
25 "wages statement," "underpayment," and/or "Private Attorney General Act" penalties) to their
26 Tree Trimmers in California.

27 JURISDICTION AND VENUE

28 11. This Court has jurisdiction over this action because the amount in controversy

1 exceeds \$25,000.

2 12. Pursuant to California Code of Civil Procedure section 395(a), venue is proper in
3 the County of Santa Clara because Defendants' obligations and liability arose, at least in part,
4 therein, and because the alleged injuries sustained by Representative Plaintiffs, as well as other
5 Class Members, occurred in the County of Santa Clara.

6 **PLAINTIFF**

7 13. Representative Plaintiffs bring this action against Defendants, for engaging in a
8 uniform policy and systematic scheme of wage abuse against their Tree Trimmers in California.
9 This scheme involved, *inter alia*, failing to pay Plaintiffs and other Tree Trimmers all prevailing
10 wages owed as well as denying them regular, overtime, and double-time compensation for all
11 applicable hours worked. Further, Defendants did not provide timely, off-duty meal or rest breaks
12 for Tree Trimmers, or break violation pay, as mandated under California law.

13 14. As used through this Complaint, the term "Class Members" refers to the
14 Representative Plaintiffs herein as well as each and every person eligible for membership in the
15 Class as described and defined herein.

16 15. Representative Plaintiff Jose Diaz Hermosillo is a natural person who was
17 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
18 August 2017. At all times herein relevant, Representative Plaintiff Jose Diaz Hermosillo was and is
19 now a person within the Class as further described and defined therein.

20 16. Representative Plaintiff Oscar Diaz Hermosillo is a natural person who was
21 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
22 August 2017. At all times herein relevant, Representative Plaintiff Oscar Diaz Hermosillo was and
23 is now a person within the Class as further described and defined therein.

24 17. During their employment, Representative Plaintiffs and members of the class were
25 not paid a prevailing wage rate, pursuant to California Labor Code Section 1771.

26 18. Moreover, Representative Plaintiffs and members of the class were not paid for all
27 hours worked due to the illegal practice by Defendants of not compensating Representative
28 Plaintiffs and members of the class for all hours worked. By way of example, Defendants engaged

1 in an uniform policy and systematic scheme of wage theft by rounding their punch times so that
2 Representative Plaintiffs and members of the class were not paid for all of their hours worked.

3 19. Furthermore, during the Class Period, Representative Plaintiffs and Class Members
4 worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek.
5 Representative Plaintiffs and Class Members, during the Class Period, also worked, on many
6 occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day in a
7 workweek. However, despite the aforementioned, Defendants denied Plaintiffs and Class Members
8 all of the overtime and double-time compensation to which they were owed.

9 20. In addition, Representative Plaintiffs routinely worked for Defendants without being
10 provided with timely, off-duty, net ten minute rest periods for every four hours worked or major
11 fraction thereof, without being provided with a thirty minute uninterrupted, duty-free meal period
12 during meal period eligible shifts, or a second thirty minute uninterrupted duty-free meal period
13 during shifts lasting ten hours or more, and without being provided with recovery periods or clean
14 drinking water, and without being paid one (1) hour of pay at the employee's regular rate of
15 compensation for each work day that a meal or rest period or recovery period was not provided.
16 Representative Plaintiffs allege, on information and belief, these meal and rest break and recovery
17 period violations were the result of policies and procedures that applied uniformly to all Class
18 Members during the Class Period. Furthermore, Representative Plaintiffs worked shifts of ten
19 hours or more but did not receive a second meal period or third rest break.

20 21. As a result of the above violations, Representative Plaintiffs' wage statements did
21 not reflect the actual number of hours worked and the lawful wages due thereon, and were
22 therefore inaccurate.

23 22. On September 20, 2017 counsel for Plaintiffs served a records request on both
24 Defendants via certified mail which requested copies of their personnel records (including payroll
25 and timekeeping records and any records signed by the Plaintiffs) pursuant to Labor Code sections
26 226(c), 432 and 1198.5. The records request included signed authorizations from both Plaintiffs
27 authorizing Defendants to release the records to their counsel in this action. Defendants failed to
28 respond to the records request and, as of the date this complaint is being filed, had still not

1 produced any of the requested employment records.

2 23. The Representative Plaintiffs bring this action on behalf of themselves and as a
3 class action, pursuant to California Code of Civil Procedure section 382, on behalf of all persons
4 similarly situated and proximately damaged by the unlawful conduct described herein.

5 DEFENDANTS

6 24. Representative Plaintiffs are informed and believe and, based thereon, allege that at
7 all times herein relevant, Defendants DTSC and DTEC were and are registered Ohio Corporations,
8 who are licensed and bonded contractors in the state of California performing professional tree
9 services on public works projects.

10 25. The true and correct names and capacities of DOES 1 through 50, inclusive, are
11 unknown to Representative Plaintiffs, who therefore sue said Defendants by such fictitious names.
12 Representative Plaintiffs are informed and believe and thereon allege that each of said fictitious
13 Defendants caused injury and damages to Representative Plaintiffs.

14 26. Defendants DOES 1 through 10 are individuals employed by Defendants.

15 27. At all times relevant herein, Defendants and DOES 11-50 inclusive were and are
16 employer(s) and person(s) within the definition of California Labor Code Section 18, the
17 applicable Industrial Wage Order, and California Business and Professions Code Section 17201.

18 28. The Representative Plaintiffs are informed and believe and, on that basis, allege that
19 at all relevant times herein mentioned each of the Defendants, including DOES 1 through 50, were
20 the agents, employees, supervisors, employers, alter egos, and/or joint ventures of the remaining
21 defendants, and were acting both individually and in the course and scope of such relationship,
22 and/or as an integrated enterprise, and/or as joint employers, with the knowledge and/or consent of
23 the remaining Defendants.

24 CLASS AND COLLECTIVE ACTION ALLEGATIONS

25 29. Representative Plaintiffs bring this action individually and as a class action on
26 behalf of all persons similarly situated and proximately damaged by Defendants' conduct,
27 including but not limited to the following class ("Class Members" or "the "Plaintiff Class"):

28 All non-exempt Tree Trimmers employees (including but not limited to
those holding the job titles of "laborer," "groundman," "apprentice

climber," "climber," "climbing arborist," "climbing arborist trainee," and "trimmer") who were employed by Defendants in the State of California at any time during the four years preceding the filing of this Complaint through to the present.

30. Defendants, their officers, and directors are excluded from the Plaintiff Class.

31. This action has been brought and may be properly maintained as a class action pursuant to California Code of Civil Procedure Section 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable as follows:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendants.
- b. Commonality: The Representative Plaintiffs and the class members share a community of interests, in part, since there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under Section 382. These common questions include, but are not necessarily limited to:
 - i. Whether Defendants violated California Labor Code sections 1771 and 1774 by failing to pay prevailing wages and/or prevailing per diem wages to their employees on public works projects;
 - ii. Whether Defendants engaged in a pattern or practice of failing to pay Class Members for all hours worked, including but not limited to shaving off hours worked by Representative Plaintiffs and members of the class by rounding of their punch times
 - iii. Whether Defendants violated the applicable IWC Wage Order and/or Labor Code Section 510 by failing to pay overtime to its employees who worked in excess of forty hours per week and/or eight hours per day;
 - iv. Whether Defendants violated the applicable IWC Wage Order and/or Labor Code Section 510 by failing to pay double-time to its employees who worked in excess of 12 hours per day and hours in excess of 8 on any seventh work-day in a work week;
 - v. Whether Defendants violated California Labor Code Section 1194(a) by failing to pay minimum, overtime, and/or double-time wages to its employees;
 - vi. Whether Defendants violated California Labor Code sections 226.7 and 512 by failing to provide Class Members, for each work period of more than five hours per day, with an off-duty meal period of at least 30 minutes, and, for each work period of four hours or major fraction thereof, a net ten minute rest period, without any compensation therefore;

- vii. Whether Defendants violated California Labor Code Section 1174 by failing to keep accurate records of employees' hours of work;
 - viii. Whether Defendants violated California Labor Code sections 201-204 by failing to pay regular, overtime, or double-time wages and meal and rest period (or recovery period) violation wages due and owing at the time certain Class Members' employment with Defendants terminated;
 - ix. Whether Defendants violated California Labor Code Section 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period;
 - x. Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code Section 203;
 - xi. Whether Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to (1) pay prevailing wage rates pursuant to Lab. Code Section 1771 (2) pay overtime compensation to its employees who worked in excess of forty hours per week and/or eight hours per day, (3) pay double-time to its employees who worked in excess of 12 hours per day and hours in excess of 8 on any seventh work-day in a work week (4) pay meal period premiums to its employees who worked in excess of five consecutive hours without a meal period, (5) pay rest period and/or recovery period premiums to its employees for each four hour period (or major fraction thereof) worked without a rest period or applicable recovery period, (6) provide accurate wage statements, and (7) pay all wages for all hours worked due promptly upon Class Members' resignation or termination;
 - xii. Whether Defendants owe penalties for the above-listed violations pursuant to California Labor Code Section 2698, *et seq.*; and,
 - xiii. Whether class-wide injunctive relief is an appropriate remedy by which to prevent and/or halt the violations alleged herein from continuing; and.
- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of the law, as alleged herein.
- d. Superiority of a Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: Each Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that each Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interest in the litigation of this case as the Class Members. Each Representative Plaintiff is

1 committed to vigorous prosecution of this case and has retained competent counsel who are
 2 experienced in conducting litigation of this nature. The Representative Plaintiffs are not
 3 subject to any individual defenses unique from those conceivably applicable to Class
 Members as a whole. The Representative Plaintiffs anticipate no management difficulties
 in this litigation.

4 COMMON FACTUAL ALLEGATIONS

5 32. As described herein, for years, Defendants have knowingly failed to adequately
 6 compensate those employees within the class definition identified above for all wages earned
 7 (including premium wages such as overtime wages and/or compensation for missed meal and/or
 8 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
 9 enjoying a significant competitive edge over Defendants' competitors.

10 33. Defendants' wage policies failed to pay Representative Plaintiffs and Class
 11 Members with a prevailing wage rate as required by California Labor Code Section 1771, with
 12 overtime wages for each hour worked beyond 8 in a work-day and 40 in a work-week, or double-
 13 time to employees who worked in excess of 12 hours per day and for hours in excess of 8 on any
 14 seventh work-day in a work week as required under the California Labor Code and the applicable
 15 IWC Wage Order(s).

16 34. Defendants' meal and rest period policies failed to provide Representative Plaintiffs
 17 and Class Members a net 10-minute rest period for every four hours worked or major fraction
 18 thereof and an uninterrupted 30-minute meal period for working five hours or more, nor did
 19 Defendants' meal and rest period policies provide second meal periods and third rest breaks for
 20 shifts of ten hours or more, or provide compensation to Representative Plaintiffs and Class
 21 Members for meal and/or rest break violations. Defendants' policies also failed to provide class
 22 members with adequate recovery periods, shade, and clean drinking water as required under
 23 California law.

24 35. California Labor Code sections 201 and 202 require Defendants to pay severed
 25 employees all wages due and owed to the employee immediately upon discharge or within 72
 26 hours of resignation of their positions, in most circumstances. California Labor Code § 203
 27 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue
 28 to pay the subject employees' wages until the back wages are paid in full or an action is

1 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

2 36. Furthermore, Defendants failed to provide the Representative Plaintiffs and Class
3 Members with accurate semimonthly itemized statements of the total number of hours worked by
4 each, and all applicable hourly rates in effect, during the pay period, in violation of California
5 Labor Code Section 226. In failing to provide the required documents, Defendants have not only
6 failed to pay its workers the full amount of compensation due but have also, until now, effectively
7 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
8 wrongdoing that such documents might otherwise have led workers to discover.

9 37. Representative Plaintiffs and all persons similarly situated are also entitled to
10 compensation for all hours worked. By way of example, Defendants engaged in a pattern or
11 practice of failing to pay Class Members for all hours worked, including but not limited to shaving
12 off hours worked by Representative Plaintiffs and members of the class by rounding of their punch
13 times.

14 38. Under California Labor Code sections 226(c), 432, and 1198.5, collectively, an
15 employee has a right to inspect (or obtain copies of) his or her personnel file, payroll and time
16 records, and documents signed by the employee relating to their obtaining or holding employment
17 with the employer. Despite Representative Plaintiffs' request for these documents, Defendants
18 failed to produce any of the requested documents in a timely manner, as required by statute, or to
19 even respond to the request. Defendants failure to comply with these requests further evidences
20 their intent to hide the full impact of their wrongdoing from employees. Plaintiffs seek injunctive
21 relief ordering the Defendants to produce the requested records and to pay penalties, attorneys'
22 fees and costs due to their non-compliance.

23 39. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Representative Plaintiffs and Class Members have sustained damages, as described above,
25 including compensation for loss of earnings for hours worked on behalf of Defendants in an
26 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
27 conduct, as set forth herein, Representative Plaintiffs and certain Class Members are entitled to
28 recover penalties for failure to provide semimonthly statements of hours worked and all applicable

hourly rates (pursuant to Labor Code Section 226) in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are also entitled to recover costs and attorneys' fees pursuant to California Labor Code sections 218.5, 1194 and/or California Civil Code Section 1021.5, among other authorities.

40. Representative Plaintiffs seek injunctive relief prohibiting Defendants from engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will continue unchecked, while the Representative Plaintiffs and Class Members bear the financial brunt of Defendants' unlawful conduct. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class are also entitled to recover costs and attorneys' fees, pursuant to statute.

First Cause of Action
Failure to Pay Wages Owed
(Violation of California Wage Orders and Labor Code §§ 510, 1194, 1197, 1198, 1771, 1774)
(Against all Defendants)

41. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

42. At all relevant times, Defendants were aware of, and under a duty to comply with, the provisions of the California Labor Code including, but not limited to, California Labor Code sections 510, 1194, 1198, 1771, and 1774.

43. California Labor Code Section 510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

44. California Labor Code Section 1194(a), in pertinent part, provides:

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

5 45. California Labor Code Section 1198, in pertinent part, provides:

6 The maximum hours of work and the standard conditions of labor fixed by
7 the commission shall be the maximum hours of work and the standard
8 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

9 46. California Labor Code Section 1771 provides:

10 Except for public works projects of one thousand dollars (\$1,000) or less, not less
11 than the general prevailing rate of per diem wages for work of a similar character in
12 the locality in which the public work is performed, and not less than the general
prevailing rate of per diem wages for holiday and overtime work fixed as provided
in this chapter, shall be paid to all workers employed on public works.

13 47. California Labor Code Section 1774 provides:

14 The contractor to whom the contract is awarded, and any subcontractor under him,
15 shall pay not less than the specified prevailing rates of wages to all workmen
employed in the execution of the contract.

16 48. Plaintiffs allege, on information and belief, that the public works projects at issue
17 during the Class Period exceed \$1,000.00.

18 49. During the Class Period, Representative Plaintiffs and Class Members worked, on
19 many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise
20 number of overtime hours will be proven at trial.

21 50. During the Class Period, Representative Plaintiffs and Class Members worked, on
22 many occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day
23 in a workweek. The precise number of double-time hours will be proven at trial.

24 51. During the Class Period, Defendants refused and/or failed to compensate
25 Representative Plaintiffs and Class Members for all of the overtime wages earned, in violation of
26 the applicable IWC Wage Order and provisions of the California Labor Code.

27 52. Moreover, during said time period, Representative Plaintiffs and many of the Class
28 Members were employed by and thereafter terminated or resigned from their positions with

1 Defendants, yet were not paid all overtime or double-time wages due upon said termination or
2 within 72 hours of said resignation of employment therefrom. Said non-payment of all wages due
3 was the direct and proximate result of a willful refusal to do so by the Defendants.

4 53. During the Class Period, Representative Plaintiffs and Class Members were not
5 compensated for all hours worked. By way of example, Defendants engaged in a pattern or
6 practice of failing to pay Class Members for all hours worked, including but not limited to
7 rounding punch times for Representative Plaintiffs and members of the class. The precise number
8 of unpaid hours in this category will be proven at trial.

9 54. By refusing to compensate Representative Plaintiffs and Class Members for
10 overtime and double-time wages earned, Defendants violated those California Labor Code
11 provisions cited herein as well as the applicable IWC Wage Order(s).

12 55. At all times during the relevant Class Period, Defendants were subject to the
13 prevailing wage laws of the State of California, including Labor Code sections 1771 and 1774, for
14 all work undertaken on public works projects. Pursuant to Labor Code Section 1771, Defendants
15 were mandated to pay their employees working on such public work projects, including Plaintiffs
16 and all applicable Class Members, not less than the general prevailing rate of per diem wages for
17 work of a similar character in the locality in which the public work was performed and not less
18 than the general prevailing rate of per diem wages for holiday, overtime, and double-time work.

19 56. The applicable per diem wages and prevailing wages required pursuant to Labor
20 Code sections 1194, 1771, and 1774 are set forth in annual and semi-annual bulletins published by
21 the California Department of Industrial Relations.

22 57. As a direct and proximate result of Defendants' unlawful conduct, as set forth
23 herein, Representative Plaintiffs and the Class Members sustained damages, including loss of
24 earnings for hours of overtime and double-time worked for Defendants in an amount to be
25 established at trial, and are entitled to recover attorneys' fees and costs of suit.

26 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

27 ///

28 ///

Second Cause of Action
Failure to Provide Meal and Rest Periods or Pay Meal and Rest Period Premiums
(California Labor Code §§ 226.7 and 512)
(Against all Defendants)

58. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

59. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of meal periods to non-exempt employees in California. The applicable wage order indicates that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” Furthermore, the wage order indicates that “an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

60. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of rest breaks to non-exempt employees in California. The applicable wage order indicates that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

61. Furthermore, California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a required recovery period break for days in which a worker works in weather conditions of 85 degrees Fahrenheit or above while being exposed to the sun. Further, the law requires an employer in such

1 a situation to provide clean drinking water, shade, and an appropriate amount of time to recover.
2 On information and belief, Representative Plaintiffs and the Class consistently worked when it was
3 85 degrees Fahrenheit in direct exposure to the sun. Moreover, Representative Plaintiffs and the
4 Class was not provided with clean drinking water and shade on such occasions. Defendants failed
5 to provide Representative Plaintiffs and the Class with recovery period breaks, shade, and clean
6 drinking water and failed to provide the hour of compensation for recovery periods missed.

7 62. Pursuant to the above provisions, Representative Plaintiffs and Class Members are
8 entitled to meal periods in which they were relieved of all job duties. Instead, Representative
9 Plaintiffs believe, and thereupon allege, that Defendants did not provide Representative Plaintiffs
10 and Class Members with sufficient timely, thirty-minute uninterrupted meal periods. Moreover, no
11 "on duty" written meal period agreement and/or waiver, valid or otherwise, affected Representative
12 Plaintiffs and the Class Members' entitlement to meal periods. Thus, Defendants violated
13 California Labor Code sections 226.7 and 512 and applicable Wage Orders.

14 63. Representative Plaintiffs are informed and believe, and thereupon allege, that
15 Defendants required Representative Plaintiffs and Class Members to work without receiving timely
16 meal periods and rest breaks to which they were entitled, including second meal periods and third
17 rest breaks.

18 64. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
19 a lawful meal period, so they are entitled to recovery pursuant to California Labor Code section
20 226.7, subdivision (b), in the amount of one additional hour of pay at the employee's regular rate of
21 compensation for each day on which one or more meal periods was not provided.

22 65. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
23 rest breaks and recovery periods, so they are entitled to recovery pursuant to Section 12(B) of the
24 applicable IWC Wage Order(s) and Labor Code Section 226.7, in the amount of one (1) additional
25 hour of pay at the employee's regular rate of compensation for each such rest period or recovery
26 period that is/was not provided to any member of the Class.

27 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

28 ///

Third Cause of Action
Failure to Pay Wages on Separation of Employment
(California Labor Code §§ 203, 2926, 2927)
(Against all Defendants))

66. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

67. California Labor Code Section 203, in pertinent part, provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

68. California Labor Code Section 2926, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who is dismissed by his employer is entitled to compensation for services rendered up to the time of such dismissal."

69. California Labor Code Section 2927, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting."

70. Numerous Class Members were employed by Defendants during the Class Period and were thereafter terminated or resigned from their positions, yet they were not paid all wages (including prevailing wage and premium overtime and double-time wages and wages for break violations) due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by the Defendants.

71. More than thirty days have elapsed since numerous Class Members were involuntarily terminated or voluntarily resigned from Defendants' employment.

72. As a direct and proximate result of Defendants' willful conduct in failing to pay said Class Members for all hours worked, these affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code Section 203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

Wherefore, Representative Plaintiffs pray for judgment as set forth below.

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Fourth Cause of Action
Failure to Provide Accurate Itemized Wage Statements
(California Labor Code §§ 226 and 1174)
(Against all Defendants)

73. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

74. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(a) provided and provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

75. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(c)(1) provided and provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to

1 exceed an aggregate penalty of four thousand dollars (\$4,000), and is
2 entitled to an award of costs and reasonable attorney's fees.

3 76. Furthermore, during the relevant time period, since and including January 1, 2013,
4 California Labor Code Section 226(e)(2) provided and provides:

5 (A) An employee is deemed to suffer injury for purposes of this
6 subdivision if the employer fails to provide a wage statement.

7 (B) An employee is deemed to suffer injury for purposes of this
8 subdivision if the employer fails to provide accurate and complete
9 information as required by any one or more of items (1) to (9),
inclusive, of subdivision (a) and the employee cannot promptly and
easily determine from the wage statement alone one or more of the
following:

10 (i) The amount of the gross wages or net wages paid to the
11 employee during the pay period or any of the other
12 information required to be provided on the itemized wage
statement pursuant to items (2) to (4), inclusive, (6), and (9)
of subdivision (a).

13 (ii) Which deductions the employer made from gross wages to
14 determine the net wages paid to the employee during the
pay period. Nothing in this subdivision alters the ability of
the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

15 (iii) The name and address of the employer and, if the employer
16 is a farm labor contractor, as defined in subdivision (b) of
Section 1682, the name and address of the legal entity that
secured the services of the employer during the pay period.

17 (iv) The name of the employee and only the last four digits of
18 his or her social security number or an employee
identification number other than a social security number.

19 77. During the relevant time period, since and including January 1, 2012, California
20 Labor Code Section 1174(d) provided and provides:

21 Every person employing labor in this state shall . . . [k]eep, at a central
22 location in the state . . . payroll records showing the hours worked daily by
and the wages paid to . . . employees employed at the respective plants or
23 establishments. These records shall be kept in accordance with rules
established for this purpose by the commission, but in any case shall be
24 kept on file for not less than three years. An employer shall not prohibit an
employee from maintaining a personal record of hours worked, or, if paid
25 on a piece-rate basis, piece-rate units earned.

26 78. Defendants have failed to provide timely, accurate itemized wage statements to the
27 Representative Plaintiffs and Class Members in accordance with California Labor Code Section
28 226. Representative Plaintiffs are informed and believe and, on that basis, allege that none of the

statements provided by Defendant accurately reflected accurate hours worked, gross wages earned, net wages earned, or the appropriate deductions of such Class Members. The wage statements also failed to identify the full name of the legal entity who employed them, as required by the statute.

79. Representative Plaintiffs seek to recover actual damages, costs, and attorneys' fees under these provisions on behalf of himself and on behalf of all Class Members.

Wherefore, Representative Plaintiffs pray for judgment as set forth below.

Fifth Cause of Action
Failure to Produce Employment Records
(California Labor Code §§ 226, 432, and 1198.5)
(Against all Defendants)

80. Representative Plaintiffs re-alleges and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

81. California Labor Code Section 226 states, in relevant part, that:

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made....

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer....

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

82. Labor Code Section 432 states that "[i]f an employee or applicant signs any

1 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
2 instrument upon request."

3 83. California Labor Code Section 1198.5 states, in relevant part, that:

4
5 (a) Every current and former employee, or his or her representative, has
6 the right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee's performance or to any
grievance concerning the employee....

8 (b) (1) The employer shall make the contents of those personnel records
9 available for inspection to the current or former employee, or his or her
representative, at reasonable intervals and at reasonable times, but not later
10 than 30 calendar days from the date the employer receives a written
request, unless the current or former employee, or his or her
11 representative, and the employer agree in writing to a date beyond 30
calendar days to inspect the records, and the agreed-upon date does not
12 exceed 35 calendar days from the employer's receipt of the written
request. Upon a written request from a current or former employee, or his
13 or her representative, the employer shall also provide a copy of the
personnel records, at a charge not to exceed the actual cost of
14 reproduction, not later than 30 calendar days from the date the employer
receives the request, unless the current or former employee, or his or her
15 representative, and the employer agree in writing to a date beyond 30
calendar days to produce a copy of the records, as long as the agreed-upon
16 date does not exceed 35 calendar days from the employer's receipt of the
written request...

17 (k) If an employer fails to permit a current or former employee, or his or
18 her representative, to inspect or copy personnel records within the times
specified in this section, or times agreed to by mutual agreement as
19 provided in this section, the current or former employee or the Labor
Commissioner may recover a penalty of seven hundred fifty dollars (\$750)
20 from the employer...

21 (l) A current or former employee may also bring an action for injunctive
22 relief to obtain compliance with this section, and may recover costs and
reasonable attorney's fees in such an action.

23 84. On September 20, 2017 counsel for Plaintiffs counsel served a records request on
24 Defendants via certified mail requesting copies of the Plaintiffs' personnel records, including
25 payroll and timekeeping records and any records signed by the Plaintiffs, pursuant to Labor Code
26 sections 226(c), 432 and 1198.5. The September 20, 2017 records request included signed
27 authorizations from both Plaintiffs authorizing Defendants to release the records to their counsel in
28 this action.

85. Defendants failed to respond in any way to the records request and did not produce any of the requested employment records.

86. Plaintiffs are informed and believe and thereupon allege that Defendants common policy, applicable to all Class Members, is to not provide employment records upon request. Furthermore Plaintiffs are informed and believe and thereupon allege that certain putative Class Members have made requests, during the statutory period covered by this claim, for their employment records which Defendants did not comply with.

87. Representative Plaintiffs seek to recover penalties, costs, and attorneys' fees, as provided for in Labor Code Sections 226 and 1198.5, in an amount according to proof at trial. Wherefore, Representative Plaintiffs pray for judgment as set forth below.

Sixth Cause of Action
Unfair Business Practices Under the Unfair Competition Law
(California Business & Professions Code §§ 17200-17208)
(Against All Defendants)

88. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

89. California Business and Professions Code sections 17200, *et seq.* prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

90. Beginning at an exact date unknown to Representative Plaintiff, but continuing during the Class Period, Defendants committed unlawful acts as defined by California Business and Professions Code section 17200. Defendants' unlawful and unfair business practices include, but are not necessarily limited to, violations of the requirements of California Labor Code sections 201-204, 226, 226.7, 510, 512, 1194, 1197, 1198, 1198.5, 1770, *et. seq.*, 2698-2699, *et. seq.*, 2926, 2927, and the applicable Wage Order(s).

91. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business and Professions Code section 17200-17208. Specifically, Defendants conducted business activities while failing to comply with the legal mandates herein.

92. Defendants' knowing failure to adopt policies in accordance with, and/or to adhere

1 to these laws, all of which are binding upon and burdensome on its competitors, engenders an
 2 unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
 3 set forth in California Business and Professions Code Section 17208.

4 93. Business and Professions Code Section 17203 provides that the Court may restore
 5 to any person in interest any money or property which may have been acquired by means of such
 6 unfair competition. As a direct and proximate result of the aforementioned acts, Representative
 7 Plaintiffs and Class Members were injured and suffered the loss of money in the amount of, inter
 8 alia, unpaid wages that they were otherwise entitled to receive. Representative Plaintiffs and Class
 9 Members are entitled to restitution pursuant to Business and Professions Code section 17203 and
 10 17208 for all wages unlawfully withheld from them as a result of Defendants' unlawful and unfair
 11 conduct.

12 94. Representative Plaintiffs' success in this action will enforce important rights
 13 affecting the public interest. Representative Plaintiffs and the Plaintiff Class seek, and are entitled
 14 to, injunctive relief as well as all other appropriate equitable remedies. Injunctive relief is
 15 necessary and appropriate to prevent Defendants from repeating the wrongful business practices
 16 alleged herein.

17 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

18 **Seventh Cause of Action**
 19 **Recovery under Private Attorneys General Act (PAGA)**
 20 **(California Labor Code § 2698, *et seq.*)**
 21 **(Against All Defendants)**

22 95. Plaintiffs Jose Diaz Hermosillo and Oscar Diaz Hermosillo re-allege and
 23 incorporate each and every allegation of the preceding paragraphs with the same force and effect as
 24 though fully set forth herein.

25 96. Plaintiffs, as aggrieved employees, bring this claim pursuant to California Labor
 26 Code sections 2698-2699 on behalf of themselves and all other current or former employees
 27 employed by Defendant as Davey Tree Surgery Company and/or The Davey Tree Expert Company
 28 in California at any time for which recovery is authorized under Labor Code sections 2698-2699, *et*
seq. Pursuant to California Labor Code Section 2699.3, on September 14, 2017, Representative

1 Plaintiffs submitted notice to the Labor and Workforce Development Agency through its website
2 of the specific provisions of the Labor Code that have been violated, including the facts and
3 theories to support those violations. Representative Plaintiffs served copies of the notice on the
4 Defendants via certified mail on September 13, 2017 and received return receipt confirming that
5 said notices were delivered on the Defendants. Representative Plaintiffs thus have complied with
6 the Private Attorneys General Act notice requirement as the 65-day time limit for a response has
7 passed with no response from the Labor and Workforce Development Agency notifying Plaintiffs
8 that the agency would investigate the claim.

9 97. As alleged above, Defendants have violated provisions of the California Labor
10 Code, including but not limited to failure to pay all wages owed, including overtime and double-
11 time, failure to provide timely duty free meal and rest periods or compensation for meal and rest
12 period violations, and failure to provide accurate wage statements. Representative Plaintiffs seek
13 recovery of unpaid wages resulting from said violations on behalf of themselves and all other
14 current or former employees employed by Defendants as Davey Tree Surgery Company and/or
15 The Davey Tree Expert Company in California at any time for which recovery is authorized under
16 California Labor Code sections 2698-2699.

17 98. Pursuant to California Labor Code Section 2699, Representative Plaintiffs also seek
18 recovery of all penalties for Defendants' above-described violations of the California Labor Code
19 that are available under PAGA. Such penalties for which Representative Plaintiffs now seek
20 recovery include, but are not limited to, those set forth in California Labor Code sections 1771 and
21 1774 (prevailing wages and associated penalties) and 558 (for causing the labor code violations
22 plead herein).

23 99. Representative Plaintiffs request an award of attorneys' fees and costs, including as
24 authorized under California Labor Code Section 2699.

25 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

26 **RELIEF SOUGHT**

27 **WHEREFORE**, the Representative Plaintiffs, on behalf of themselves and the proposed
28 Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each

1 of them, jointly and separately, as follows:

2 1. That the Court declare, adjudge, and decree that this action is a proper class action
3 and certify the proposed class and/or any appropriate subclasses under California Code of Civil
4 Procedure Section 382;

5 2. That the Court declare, adjudge, and decree that Defendants violated the provisions
6 of the California Labor Code and the applicable California Industrial Welfare Commission Wage
7 Order(s) as to the Representative Plaintiffs and Class Members as alleged herein;

8 3. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
9 minimum, overtime, and double-time wage compensation (pursuant to California Labor Code
10 sections 510, 1194);

11 4. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
12 statutory prevailing wage and per diem compensation (pursuant to California Labor Code sections
13 1771 & 1774);

14 5. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
15 at each employee's regular rate of compensation for each workday on which a meal period(s) was
16 not provided (pursuant to California Labor Code Section 226.7);

17 6. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
18 at each employee's regular rate of compensation for each workday on which a rest period(s) was
19 not provided (pursuant to California Labor Code Section 226.7);

20 7. That the Court make an award to the Plaintiffs and Plaintiff Class of "waiting time"
21 penalties (pursuant to California Labor Code Section 203);

22 8. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
23 provide accurate wage statements (pursuant to Labor Code Section 226);

24 9. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
25 produce employment records upon request (pursuant to Labor Code sections 226 and 1198.5);

26 10. That the Court make an award to the Plaintiffs and Plaintiff Class of penalties,
27 pursuant to California Labor Code sections 2926-2927;

28 11. That the Court order Defendants to pay restitution to the Plaintiffs and Plaintiff

1 Class, pursuant to California Business and Professions Code sections 17200-17208;

2 12. That the Court enjoin Defendants, ordering them to cease and desist from unlawful
3 activities in violation of California Business and Professions Code Section 17200, *et seq.*;

4 13. That the Court order Defendants to pay penalties pursuant to the Private Attorneys
5 General Act, California Labor Code sections 2698-2699, *et seq.*;

6 14. For all other Orders, findings and determinations identified and sought in this
7 Complaint;

8 15. For interest on the amount of any and all economic losses, at the prevailing legal
9 rate;

10 16. For reasonable attorneys' fees, pursuant to California Labor Code sections 218.5,
11 226, 1194, 1198.5, 2699, *et seq.* and/or California Code of Civil Procedure Section 1021.5; and;

12 17. For costs of suit and any and all such other relief as the Court deems just and
13 proper.

14 Dated: December 7, 2017

Respectfully submitted,

15
16 By:



17 Kevin Allen, Esq.
18 VELTON ZEGELMAN, PC
19
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28

DEMAND FOR JURY TRIAL

Representative Plaintiffs and the proposed Plaintiff Class hereby demand a jury trial for each cause of action for which they are entitled to a jury trial.

Dated: December 7, 2017

Respectfully submitted,

By:



Kevin Allen, Esq.
VELTON ZEGELMAN, PC

SOP		<input type="checkbox"/> Personal <input type="checkbox"/> Sub-Serve <input type="checkbox"/> Post & Mail <input type="checkbox"/> Not Found <input type="checkbox"/> Locate <input type="checkbox"/> Cancel & Return		
MailedBy:		<input type="checkbox"/> Agent <input type="checkbox"/> One Legal Date:		
Date	Time	Loc	Comments	Amount
Service Date/time:				
Served To:				
Title/Relationship:				
Server:	Jimmy Lizama	Server Phone #:	213-216-2132	Server Mobile #: 213-216-2132

EXHIBIT B



**Service of Process
Transmittal**

12/19/2017

CT Log Number 532498497

TO: Heather Micozzi
The Davey Tree Expert Company
1500 N Mantua St
Kent, OH 44240-2399

RE: Process Served in California

FOR: Davey Tree Surgery Company (Domestic State: OH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Jose Diaz Hermosillo and Oscar diaz Hermosillo, on behalf of themselves and all others similarly situated, Pltfs. vs. Davey Tree Surgery Company, etc., et al., Dfts.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Instructions, Complaint

COURT/AGENCY: Santa Clara County - Superior Court, CA
Case # 17CV320135

NATURE OF ACTION: Employee Litigation - Discrimination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 12/19/2017 at 15:00

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Kevin Allen
Velton Zegelman P.C.
1261 Lincoln Avenue, Suite 208
San Jose, CA 95125
408-505-7892

ACTION ITEMS: CT has retained the current log, Retain Date: 12/20/2017, Expected Purge Date: 12/25/2017

Image SOP

Email Notification, Heather Micozzi heather.micozzi@davey.com

Email Notification, Rene Tatka rene.tatka@davey.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

12/19/17 @BPM

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DAVEY TREE SURGERY COMPANY, an Ohio Corporation; THE
DAVEY TREE EXPERT COMPANY, an Ohio Corporation; and DOES
1 through 50, inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSE DIAZ HERMOSILLO, OSCAR DIAZ HERMOSILLO on behalf
of themselves and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED

12/7/2017 10:24 AM

Clerk of Court
Superior Court of CA,
County of Santa Clara
17CV320135
Reviewed By: R. Walker

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO)** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Santa Clara Superior Court
191 N. First Street, San Jose, CA 95113

17CV320135

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kevin Allen, Velton Zegelman P.C., 1261 Lincoln Avenue, Suite 208, San Jose, CA 95125; (925) 695-4913

DATE: 12/7/2017 10:24 AM Clerk of Court Clerk, by R. Walker, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): DAVEY TREE SURGERY COMPANY, an Ohio Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin R. Allen (SBN 237994) Velton Zegelman P.C. 1261 Lincoln Avenue, Suite 208 San Jose, California 95125 TELEPHONE NO.: 925.695.4913 FAX NO.: 925.334.7477 ATTORNEY FOR (Name): Jose Diaz Hermosillo, Oscar Diaz Hermosillo		FOR COURT USE ONLY E-FILED 12/7/2017 10:24 AM Clerk of Court Superior Court of CA, County of Santa Clara 17CV320135 Reviewed By: R. Walker			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. 1st Street MAILING ADDRESS: 191 N. 1st Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Courthouse					
CASE NAME: Hermosillo et al. v. Davey Tree Surgery Co., et al.					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 50%; padding: 5px;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> </tr> </table>			CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> <td style="width: 50%; padding: 5px;"> CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">17CV320135</div> </td> </tr> <tr> <td colspan="2" style="padding: 5px;"> JUDGE: DEPT: </td> </tr> </table>		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">17CV320135</div>	JUDGE: DEPT:	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">17CV320135</div>				
JUDGE: DEPT:					

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

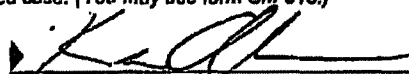
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 7, 2017

Kevin R. Allen

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

 Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740.
 Cal. Standards of Judicial Administration, Std. 3.10
 www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (08)	Antitrust/Trade Regulation (03)
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller	Claims Involving Mass Tort (40)
	Plaintiff (not fraud or negligence)	Securities Litigation (28)
	Negligent Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment (Out of County)
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Confession of Judgment (non-domestic relations)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (16)	Sister State Judgment
Medical Malpractice (45)	Auto Subrogation	Administrative Agency Award (not unpaid taxes)
Medical Malpractice—Physicians & Surgeons	Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Professional Health Care Malpractice	Other Contract (37)	Other Enforcement of Judgment Case
Other PUPD/WD (23)	Contractual Fraud	
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Miscellaneous Civil Complaint
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	RICO (27)
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	Other Complaint (not specified above) (42)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Other PUPD/WD	Other Real Property (e.g., quiet title) (28)	Injunctive Relief Only (non-harassment)
Non-PUPD/WD (Other) Tort	Writ of Possession of Real Property	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Other Commercial Complaint Case (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Civil Complaint (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Miscellaneous Civil Petition
Fraud (16)	Unlawful Detainer	Partnership and Corporate Governance (21)
Intellectual Property (19)	Commercial (31)	Other Petition (not specified above) (43)
Professional Negligence (25)	Residential (32)	Civil Harassment
Legal Malpractice	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Workplace Violence
Other Professional Malpractice (not medical or legal)	Judicial Review	Elder/Dependent Adult Abuse
Other Non-PUPD/WD Tort (35)	Asset Forfeiture (05)	Election Contest
Employment	Petition Re: Arbitration Award (11)	Petition for Name Change
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Relief From Late Claim
Other Employment (15)	Writ—Administrative Mandamus	Other Civil Petition
	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

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and the Plaintiff Class

11 IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13 (UNLIMITED JURISDICTION)
14

15 JOSE DIAZ HERMOSILLO, OSCAR DIAZ
16 HERMOSILLO on behalf of themselves and all
17 others similarly situated,

18 Plaintiffs,

19 vs.

20 DAVEY TREE SURGERY COMPANY, an
21 Ohio Corporation; THE DAVEY TREE
22 EXPERT COMPANY, an Ohio Corporation;
and DOES 1 through 50, inclusive,

23 Defendants.
24
25
26
27
28

Case No.

17CV320135

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

DEMAND FOR JURY TRIAL

1 Representative Plaintiffs JOSE DIAZ HERMOSILLO and OSCAR DIAZ HERMOSILLO
2 complain and allege as follows:

3 **PRELIMINARY STATEMENT**

4 1. This is a class action, brought on behalf of Plaintiffs JOSE DIAZ HERMOSILLO
5 and OSCAR DIAZ HERMOSILLO ("Plaintiffs" or "Representative Plaintiffs") and all other
6 persons similarly situated (collectively "Class Members") who are or have been employed as non-
7 exempt tree care service employees (including but not limited to those holding the job titles of
8 "laborer," "groundman," "apprentice climber," "climber," "climbing arborist," "climbing arborist
9 trainee," and "trimmer") by Defendants DAVEY TREE SURGERY COMPANY ("DTSC"), THE
10 DAVEY TREE EXPERT COMPANY ("DTEC"), and DOES 1-50, inclusive (hereinafter,
11 collectively "Defendants") in California within the applicable Class Period (referred to herein as
12 "Class Members" or "Tree Trimmers"). Representative Plaintiffs, on behalf of themselves and the
13 Class Members, seek unpaid wages including regular wages, overtime wages, double-time wages,
14 prevailing wages, compensation for missed meal and rest periods, penalties for inaccurate wage
15 statements and late payment of wages, interest thereon, related penalties, injunctive and other
16 equitable relief, and reasonable attorneys' fees and litigation costs pursuant to, *inter alia.*; Title 8 of
17 the California Code of Regulations, California Business and Professions Code sections 17200, *et*
18 *seq.*, California Code of Civil Procedure Section 1021.5, and various provisions of the California
19 Labor Code.

20 2. The "Class Period" is defined as the four years prior to the date on which this
21 Complaint was initially filed and continuing through the present time, based upon the allegation
22 that the violations of California's wage and hour laws, as described more fully below, have been
23 ongoing throughout that time.

24 3. During the Class Period, Representative Plaintiffs allege, on information and belief,
25 that Defendants have had a consistent policy of (1) unlawfully failing to pay Representative
26 Plaintiffs and Class Members prevailing wages, as required by California Labor Code Section
27 1771; (2) failing to pay Representative Plaintiffs and Class Members for all hours worked, by
28 including but not limited to shaving off hours worked by Representative Plaintiffs and members of

the class by rounding of their punch times; (3) failing to pay Representative Plaintiffs and Class Members overtime wages for more than 8 hours of work in a work-day and/or more than 40 hours in a work-week; (4) failing to pay Representative Plaintiffs and Class Members double-time wages for more than 12 hours of work in a work-day and for wages earned over 8 hours worked on the seventh day worked in a work-week; (5) unlawfully failing to provide Representative Plaintiffs and Class Members with timely, statutorily-mandated meal and rest periods and/or failing to properly compensate them for meal and rest period violations; (6) willfully failing to provide Representative Plaintiffs and Class Members with accurate semi-monthly itemized wage statements that correctly identified the name of the employer; (7) willfully failing to pay compensation owed in a prompt and timely manner to Representative Plaintiffs and Class Members whose employment with Defendants has terminated; and (8) violating California's Unfair Competition Law (the "UCL").

INTRODUCTION

4. Defendant DAVEY TREE SURGERY COMPANY ("DTSC") is a registered Ohio Corporation, who is a licensed and bonded contractor in the state of California performing professional tree services on public works projects in Santa Clara County.

5. Defendant THE DAVEY TREE EXPERT COMPANY ("DTEC") is a registered Ohio Corporation with its headquarters in Kent, Ohio, who is a licensed and bonded contractor in the state of California performing professional tree services on public works projects in Santa Clara County.

6. Representative Plaintiffs allege, based on information and belief, that during the relevant Class Period Defendants DTSC and DTEC have employed hundreds of employees in California in positions that did not, and currently do not, meet any known test for exemption from the payment of minimum and overtime wages, and/or the entitlement to accurate itemized wage statements and meal and rest periods. Representative Plaintiffs are also informed and believe and based thereon allege that Defendants DTSC and DTEC actively sought, engaged in, and employed Plaintiffs and similarly situated Class Members on public works projects subject to prevailing wage statutes.

7. Despite actual knowledge of these facts and legal mandates, Defendants had and

1 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
2 by electing not to pay prevailing wage rates, not to pay Representative Plaintiffs and class
3 members wages owed for all hours worked by, *inter alia*, "shaving" hours and rounding punch
4 times, not paying statutorily required regular and overtime wages as well as prevailing wages, not
5 providing off-duty, timely meal and rest periods or compensation therefore, not providing accurate
6 wage statements, and not providing all wages due and owing upon employees' termination in a
7 timely manner.

8 8. Representative Plaintiffs are informed and believe and, based thereon, allege that
9 officers and managing agents of defendant DTSC and DTEC, knew of these facts and legal
10 mandates yet, nonetheless, repeatedly authorized and/or ratified the violations of the laws cited
11 herein.

12 9. Despite Defendants' knowledge of Representative Plaintiffs and Class Members'
13 entitlement to prevailing wages, wages for all hours worked, premium wages for daily and weekly
14 overtime hours worked, meal and rest periods or break violation pay for all applicable work
15 periods, and accurate wage statements, Defendant failed to provide the same to Representative
16 Plaintiffs and Class Members, in violation of the California Labor Code and Business and
17 Professions Code, the applicable California Industrial Welfare Commission Wage Order and Title
18 8 of the California Code of Regulations. Moreover, Defendants failed to pay all final wages to
19 those Plaintiffs and Class Members whose employment has terminated.

20 10. This action is brought to redress and end this long-time pattern of unlawful conduct
21 once and for all. Despite actual knowledge of these facts and legal mandates, Defendants have and
22 continue to enjoy an advantage over their competition and a imposed a resultant disadvantage to its
23 workers by electing not to pay premium wages (e.g., overtime, double-time, prevailing wages,
24 meal and rest period wages) and/or penalties to which they are entitled (e.g., "waiting time,"
25 "wages statement," "underpayment," and/or "Private Attorney General Act" penalties) to their
26 Tree Trimmers in California.

27 JURISDICTION AND VENUE

28 11. This Court has jurisdiction over this action because the amount in controversy

1 exceeds \$25,000.

2 12. Pursuant to California Code of Civil Procedure section 395(a), venue is proper in
3 the County of Santa Clara because Defendants' obligations and liability arose, at least in part,
4 therein, and because the alleged injuries sustained by Representative Plaintiffs, as well as other
5 Class Members, occurred in the County of Santa Clara.

6 **PLAINTIFF**

7 13. Representative Plaintiffs bring this action against Defendants, for engaging in a
8 uniform policy and systematic scheme of wage abuse against their Tree Trimmers in California.
9 This scheme involved, *inter alia*, failing to pay Plaintiffs and other Tree Trimmers all prevailing
10 wages owed as well as denying them regular, overtime, and double-time compensation for all
11 applicable hours worked. Further, Defendants did not provide timely, off-duty meal or rest breaks
12 for Tree Trimmers, or break violation pay, as mandated under California law.

13 14. As used through this Complaint, the term "Class Members" refers to the
14 Representative Plaintiffs herein as well as each and every person eligible for membership in the
15 Class as described and defined herein.

16 15. Representative Plaintiff Jose Diaz Hermosillo is a natural person who was
17 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
18 August 2017. At all times herein relevant, Representative Plaintiff Jose Diaz Hermosillo was and is
19 now a person within the Class as further described and defined therein.

20 16. Representative Plaintiff Oscar Diaz Hermosillo is a natural person who was
21 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
22 August 2017. At all times herein relevant, Representative Plaintiff Oscar Diaz Hermosillo was and
23 is now a person within the Class as further described and defined therein.

24 17. During their employment, Representative Plaintiffs and members of the class were
25 not paid a prevailing wage rate, pursuant to California Labor Code Section 1771.

26 18. Moreover, Representative Plaintiffs and members of the class were not paid for all
27 hours worked due to the illegal practice by Defendants of not compensating Representative
28 Plaintiffs and members of the class for all hours worked. By way of example, Defendants engaged

1 in an uniform policy and systematic scheme of wage theft by rounding their punch times so that
2 Representative Plaintiffs and members of the class were not paid for all of their hours worked.

3 19. Furthermore, during the Class Period, Representative Plaintiffs and Class Members
4 worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek.
5 Representative Plaintiffs and Class Members, during the Class Period, also worked, on many
6 occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day in a
7 workweek. However, despite the aforementioned, Defendants denied Plaintiffs and Class Members
8 all of the overtime and double-time compensation to which they were owed.

9 20. In addition, Representative Plaintiffs routinely worked for Defendants without being
10 provided with timely, off-duty, net ten minute rest periods for every four hours worked or major
11 fraction thereof, without being provided with a thirty minute uninterrupted, duty-free meal period
12 during meal period eligible shifts, or a second thirty minute uninterrupted duty-free meal period
13 during shifts lasting ten hours or more, and without being provided with recovery periods or clean
14 drinking water, and without being paid one (1) hour of pay at the employee's regular rate of
15 compensation for each work day that a meal or rest period or recovery period was not provided.
16 Representative Plaintiffs allege, on information and belief, these meal and rest break and recovery
17 period violations were the result of policies and procedures that applied uniformly to all Class
18 Members during the Class Period. Furthermore, Representative Plaintiffs worked shifts of ten
19 hours or more but did not receive a second meal period or third rest break.

20 21. As a result of the above violations, Representative Plaintiffs' wage statements did
21 not reflect the actual number of hours worked and the lawful wages due thereon, and were
22 therefore inaccurate.

23 22. On September 20, 2017 counsel for Plaintiffs served a records request on both
24 Defendants via certified mail which requested copies of their personnel records (including payroll
25 and timekeeping records and any records signed by the Plaintiffs) pursuant to Labor Code sections
26 226(c), 432 and 1198.5. The records request included signed authorizations from both Plaintiffs
27 authorizing Defendants to release the records to their counsel in this action. Defendants failed to
28 respond to the records request and, as of the date this complaint is being filed, had still not

1 produced any of the requested employment records.

2 23. The Representative Plaintiffs bring this action on behalf of themselves and as a
3 class action, pursuant to California Code of Civil Procedure section 382, on behalf of all persons
4 similarly situated and proximately damaged by the unlawful conduct described herein.

5 DEFENDANTS

6 24. Representative Plaintiffs are informed and believe and, based thereon, allege that at
7 all times herein relevant, Defendants DTSC and DTEC were and are registered Ohio Corporations,
8 who are licensed and bonded contractors in the state of California performing professional tree
9 services on public works projects.

10 25. The true and correct names and capacities of DOES 1 through 50, inclusive, are
11 unknown to Representative Plaintiffs, who therefore sue said Defendants by such fictitious names.
12 Representative Plaintiffs are informed and believe and thereon allege that each of said fictitious
13 Defendants caused injury and damages to Representative Plaintiffs.

14 26. Defendants DOES 1 through 10 are individuals employed by Defendants.

15 27. At all times relevant herein, Defendants and DOES 11-50 inclusive were and are
16 employer(s) and person(s) within the definition of California Labor Code Section 18, the
17 applicable Industrial Wage Order, and California Business and Professions Code Section 17201.

18 28. The Representative Plaintiffs are informed and believe and, on that basis, allege that
19 at all relevant times herein mentioned each of the Defendants, including DOES 1 through 50, were
20 the agents, employees, supervisors, employers, alter egos, and/or joint ventures of the remaining
21 defendants, and were acting both individually and in the course and scope of such relationship,
22 and/or as an integrated enterprise, and/or as joint employers, with the knowledge and/or consent of
23 the remaining Defendants.

24 CLASS AND COLLECTIVE ACTION ALLEGATIONS

25 29. Representative Plaintiffs bring this action individually and as a class action on
26 behalf of all persons similarly situated and proximately damaged by Defendants' conduct,
27 including but not limited to the following class ("Class Members" or "the Plaintiff Class"):

28 All non-exempt Tree Trimmers employees (including but not limited to
those holding the job titles of "laborer," "groundman," "apprentice

1 climber," "climber," "climbing arborist," "climbing arborist trainee," and
 2 "trimmer") who were employed by Defendants in the State of California at
 any time during the four years preceding the filing of this Complaint
 through to the present.

3 30. Defendants, their officers, and directors are excluded from the Plaintiff Class.

4 31. This action has been brought and may be properly maintained as a class action
 5 pursuant to California Code of Civil Procedure Section 382 because there is a well-defined
 6 community of interest in the litigation and the proposed class is easily ascertainable as follows:

- 7
- 8 a. Numerosity: A class action is the only available method for the fair and efficient
 adjudication of this controversy. The members of the Plaintiff Class are so numerous that
 joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs
 9 are informed and believe and, on that basis, allege that there are sufficient Class Members
 to meet the numerosity requirement. Membership in the Class will be determined upon
 10 analysis of employee and payroll, among other, records maintained by Defendants.
- 11 b. Commonality: The Representative Plaintiffs and the class members share a community of
 interests, in part, since there are numerous common questions and issues of fact and law
 12 which predominate over any questions and issues solely affecting individual members,
 thereby making a class action superior to other available methods for the fair and efficient
 13 adjudication of the controversy. Consequently, class certification is proper under Section
 382. These common questions include, but are not necessarily limited to:
- 14
- 15 i. Whether Defendants violated California Labor Code sections 1771 and
 1774 by failing to pay prevailing wages and/or prevailing per diem wages
 to their employees on public works projects;
 - 16 ii. Whether Defendants engaged in a pattern or practice of failing to pay
 17 Class Members for all hours worked, including but not limited to shaving
 off hours worked by Representative Plaintiffs and members of the class by
 18 rounding of their punch times
 - 19 iii. Whether Defendants violated the applicable IWC Wage Order and/or
 Labor Code Section 510 by failing to pay overtime to its employees who
 20 worked in excess of forty hours per week and/or eight hours per day;
 - 21 iv. Whether Defendants violated the applicable IWC Wage Order and/or
 Labor Code Section 510 by failing to pay double-time to its employees
 22 who worked in excess of 12 hours per day and hours in excess of 8 on any
 seventh work-day in a work week;
 - 23 v. Whether Defendants violated California Labor Code Section 1194(a) by
 24 failing to pay minimum, overtime, and/or double-time wages to its
 employees;
 - 25 vi. Whether Defendants violated California Labor Code sections 226.7 and
 26 512 by failing to provide Class Members, for each work period of more
 than five hours per day, with an off-duty meal period of at least 30
 27 minutes, and, for each work period of four hours or major fraction thereof,
 a net ten minute rest period, without any compensation therefore;
- 28

- vii. Whether Defendants violated California Labor Code Section 1174 by failing to keep accurate records of employees' hours of work;
 - viii. Whether Defendants violated California Labor Code sections 201-204 by failing to pay regular, overtime, or double-time wages and meal and rest period (or recovery period) violation wages due and owing at the time certain Class Members' employment with Defendants terminated;
 - ix. Whether Defendants violated California Labor Code Section 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period;
 - x. Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code Section 203;
 - xi. Whether Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to (1) pay prevailing wage rates pursuant to Lab. Code Section 1771 (2) pay overtime compensation to its employees who worked in excess of forty hours per week and/or eight hours per day, (3) pay double-time to its employees who worked in excess of 12 hours per day and hours in excess of 8 on any seventh work-day in a work week (4) pay meal period premiums to its employees who worked in excess of five consecutive hours without a meal period, (5) pay rest period and/or recovery period premiums to its employees for each four hour period (or major fraction thereof) worked without a rest period or applicable recovery period, (6) provide accurate wage statements, and (7) pay all wages for all hours worked due promptly upon Class Members' resignation or termination;
 - xii. Whether Defendants owe penalties for the above-listed violations pursuant to California Labor Code Section 2698, *et seq.*; and,
 - xiii. Whether class-wide injunctive relief is an appropriate remedy by which to prevent and/or halt the violations alleged herein from continuing; and.
- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of the law, as alleged herein.
- d. Superiority of a Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: Each Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that each Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interest in the litigation of this case as the Class Members. Each Representative Plaintiff is

1 committed to vigorous prosecution of this case and has retained competent counsel who are
2 experienced in conducting litigation of this nature. The Representative Plaintiffs are not
3 subject to any individual defenses unique from those conceivably applicable to Class
Members as a whole. The Representative Plaintiffs anticipate no management difficulties
in this litigation.

4 COMMON FACTUAL ALLEGATIONS

5 32. As described herein, for years, Defendants have knowingly failed to adequately
6 compensate those employees within the class definition identified above for all wages earned
7 (including premium wages such as overtime wages and/or compensation for missed meal and/or
8 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
9 enjoying a significant competitive edge over Defendants' competitors.

10 33. Defendants' wage policies failed to pay Representative Plaintiffs and Class
11 Members with a prevailing wage rate as required by California Labor Code Section 1771, with
12 overtime wages for each hour worked beyond 8 in a work-day and 40 in a work-week, or double-
13 time to employees who worked in excess of 12 hours per day and for hours in excess of 8 on any
14 seventh work-day in a work week as required under the California Labor Code and the applicable
15 IWC Wage Order(s).

16 34. Defendants' meal and rest period policies failed to provide Representative Plaintiffs
17 and Class Members a net 10-minute rest period for every four hours worked or major fraction
18 thereof and an uninterrupted 30-minute meal period for working five hours or more, nor did
19 Defendants' meal and rest period policies provide second meal periods and third rest breaks for
20 shifts of ten hours or more, or provide compensation to Representative Plaintiffs and Class
21 Members for meal and/or rest break violations. Defendants' policies also failed to provide class
22 members with adequate recovery periods, shade, and clean drinking water as required under
23 California law.

24 35. California Labor Code sections 201 and 202 require Defendants to pay severed
25 employees all wages due and owed to the employee immediately upon discharge or within 72
26 hours of resignation of their positions, in most circumstances. California Labor Code § 203
27 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue
28 to pay the subject employees' wages until the back wages are paid in full or an action is

1 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

2 36. Furthermore, Defendants failed to provide the Representative Plaintiffs and Class
3 Members with accurate semimonthly itemized statements of the total number of hours worked by
4 each, and all applicable hourly rates in effect, during the pay period, in violation of California
5 Labor Code Section 226. In failing to provide the required documents, Defendants have not only
6 failed to pay its workers the full amount of compensation due but have also, until now, effectively
7 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
8 wrongdoing that such documents might otherwise have led workers to discover.

9 37. Representative Plaintiffs and all persons similarly situated are also entitled to
10 compensation for all hours worked. By way of example, Defendants engaged in a pattern or
11 practice of failing to pay Class Members for all hours worked, including but not limited to shaving
12 off hours worked by Representative Plaintiffs and members of the class by rounding of their punch
13 times.

14 38. Under California Labor Code sections 226(c), 432, and 1198.5, collectively, an
15 employee has a right to inspect (or obtain copies of) his or her personnel file, payroll and time
16 records, and documents signed by the employee relating to their obtaining or holding employment
17 with the employer. Despite Representative Plaintiffs' request for these documents, Defendants
18 failed to produce any of the requested documents in a timely manner, as required by statute, or to
19 even respond to the request. Defendants failure to comply with these requests further evidences
20 their intent to hide the full impact of their wrongdoing from employees. Plaintiffs seek injunctive
21 relief ordering the Defendants to produce the requested records and to pay penalties, attorneys'
22 fees and costs due to their non-compliance.

23 39. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Representative Plaintiffs and Class Members have sustained damages, as described above,
25 including compensation for loss of earnings for hours worked on behalf of Defendants in an
26 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
27 conduct, as set forth herein, Representative Plaintiffs and certain Class Members are entitled to
28 recover penalties for failure to provide semimonthly statements of hours worked and all applicable

1 hourly rates (pursuant to Labor Code Section 226) in an amount to be established at trial. As a
 2 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
 3 Representative Plaintiffs and Class Members are also entitled to recover costs and attorneys' fees
 4 pursuant to California Labor Code sections 218.5, 1194 and/or California Civil Code Section
 5 1021.5, among other authorities.

6 40. Representative Plaintiffs seek injunctive relief prohibiting Defendants from
 7 engaging in the complained-of illegal labor acts and practices in the future. Representative
 8 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
 9 under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
 10 continue unchecked, while the Representative Plaintiffs and Class Members bear the financial
 11 brunt of Defendants' unlawful conduct. As a further direct and proximate result of Defendants'
 12 unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class are also
 13 entitled to recover costs and attorneys' fees, pursuant to statute.

14 **First Cause of Action**
 15 **Failure to Pay Wages Owed**
 16 **(Violation of California Wage Orders and Labor Code §§ 510, 1194, 1197, 1198, 1771, 1774)**
 17 **(Against all Defendants)**

18 41. Representative Plaintiffs incorporate in this cause of action each and every
 19 allegation of the preceding paragraphs with the same force and effect as though fully set forth
 20 herein.

21 42. At all relevant times, Defendants were aware of, and under a duty to comply with,
 22 the provisions of the California Labor Code including, but not limited to, California Labor Code
 23 sections 510, 1194, 1198, 1771, and 1774.

24 43. California Labor Code Section 510(a), in pertinent part, provides:

25 Any work in excess of eight hours in one workday and any work in excess
 26 of 40 hours in any one workweek and the first eight hours worked on the
 27 seventh day of work in any one workweek shall be compensated at the rate
 28 of no less than one and one-half times the regular rate of pay for an
 employee. Any work in excess of 12 hours in one day shall be
 compensated at the rate of no less than twice the regular rate of pay for an
 employee. In addition, any work in excess of eight hours on any seventh
 day of a workweek shall be compensated at the rate of no less than twice
 the regular rate of pay of an employee.

44. California Labor Code Section 1194(a), in pertinent part, provides:

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

5 45. California Labor Code Section 1198, in pertinent part, provides:

6 The maximum hours of work and the standard conditions of labor fixed by
7 the commission shall be the maximum hours of work and the standard
8 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

9 46. California Labor Code Section 1771 provides:

10 Except for public works projects of one thousand dollars (\$1,000) or less, not less
11 than the general prevailing rate of per diem wages for work of a similar character in
12 the locality in which the public work is performed, and not less than the general
prevailing rate of per diem wages for holiday and overtime work fixed as provided
in this chapter, shall be paid to all workers employed on public works.

13 47. California Labor Code Section 1774 provides:

14 The contractor to whom the contract is awarded, and any subcontractor under him,
15 shall pay not less than the specified prevailing rates of wages to all workmen
employed in the execution of the contract.

16 48. Plaintiffs allege, on information and belief, that the public works projects at issue
17 during the Class Period exceed \$1,000.00.

18 49. During the Class Period, Representative Plaintiffs and Class Members worked, on
19 many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise
20 number of overtime hours will be proven at trial.

21 50. During the Class Period, Representative Plaintiffs and Class Members worked, on
22 many occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day
23 in a workweek. The precise number of double-time hours will be proven at trial.

24 51. During the Class Period, Defendants refused and/or failed to compensate
25 Representative Plaintiffs and Class Members for all of the overtime wages earned, in violation of
26 the applicable IWC Wage Order and provisions of the California Labor Code.

27 52. Moreover, during said time period, Representative Plaintiffs and many of the Class
28 Members were employed by and thereafter terminated or resigned from their positions with

1 Defendants, yet were not paid all overtime or double-time wages due upon said termination or
2 within 72 hours of said resignation of employment therefrom. Said non-payment of all wages due
3 was the direct and proximate result of a willful refusal to do so by the Defendants.

4 53. During the Class Period, Representative Plaintiffs and Class Members were not
5 compensated for all hours worked. By way of example, Defendants engaged in a pattern or
6 practice of failing to pay Class Members for all hours worked, including but not limited to
7 rounding punch times for Representative Plaintiffs and members of the class. The precise number
8 of unpaid hours in this category will be proven at trial.

9 54. By refusing to compensate Representative Plaintiffs and Class Members for
10 overtime and double-time wages earned, Defendants violated those California Labor Code
11 provisions cited herein as well as the applicable IWC Wage Order(s).

12 55. At all times during the relevant Class Period, Defendants were subject to the
13 prevailing wage laws of the State of California, including Labor Code sections 1771 and 1774, for
14 all work undertaken on public works projects. Pursuant to Labor Code Section 1771, Defendants
15 were mandated to pay their employees working on such public work projects, including Plaintiffs
16 and all applicable Class Members, not less than the general prevailing rate of per diem wages for
17 work of a similar character in the locality in which the public work was performed and not less
18 than the general prevailing rate of per diem wages for holiday, overtime, and double-time work.

19 56. The applicable per diem wages and prevailing wages required pursuant to Labor
20 Code sections 1194, 1771, and 1774 are set forth in annual and semi-annual bulletins published by
21 the California Department of Industrial Relations.

22 57. As a direct and proximate result of Defendants' unlawful conduct, as set forth
23 herein, Representative Plaintiffs and the Class Members sustained damages, including loss of
24 earnings for hours of overtime and double-time worked for Defendants in an amount to be
25 established at trial, and are entitled to recover attorneys' fees and costs of suit.

26 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

27 ///

28 ///

Second Cause of Action
Failure to Provide Meal and Rest Periods or Pay Meal and Rest Period Premiums
(California Labor Code §§ 226.7 and 512)
(Against all Defendants)

58. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

59. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of meal periods to non-exempt employees in California. The applicable wage order indicates that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” Furthermore, the wage order indicates that “an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

60. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of rest breaks to non-exempt employees in California. The applicable wage order indicates that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

61. Furthermore, California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a required recovery period break for days in which a worker works in weather conditions of 85 degrees Fahrenheit or above while being exposed to the sun. Further, the law requires an employer in such

1 a situation to provide clean drinking water, shade, and an appropriate amount of time to recover.
2 On information and belief, Representative Plaintiffs and the Class consistently worked when it was
3 85 degrees Fahrenheit in direct exposure to the sun. Moreover, Representative Plaintiffs and the
4 Class was not provided with clean drinking water and shade on such occasions. Defendants failed
5 to provide Representative Plaintiffs and the Class with recovery period breaks, shade, and clean
6 drinking water and failed to provide the hour of compensation for recovery periods missed.

7 62. Pursuant to the above provisions, Representative Plaintiffs and Class Members are
8 entitled to meal periods in which they were relieved of all job duties. Instead, Representative
9 Plaintiffs believe, and thereupon allege, that Defendants did not provide Representative Plaintiffs
10 and Class Members with sufficient timely, thirty-minute uninterrupted meal periods. Moreover, no
11 "on duty" written meal period agreement and/or waiver, valid or otherwise, affected Representative
12 Plaintiffs and the Class Members' entitlement to meal periods. Thus, Defendants violated
13 California Labor Code sections 226.7 and 512 and applicable Wage Orders.

14 63. Representative Plaintiffs are informed and believe, and thereupon allege, that
15 Defendants required Representative Plaintiffs and Class Members to work without receiving timely
16 meal periods and rest breaks to which they were entitled, including second meal periods and third
17 rest breaks.

18 64. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
19 a lawful meal period, so they are entitled to recovery pursuant to California Labor Code section
20 226.7, subdivision (b), in the amount of one additional hour of pay at the employee's regular rate of
21 compensation for each day on which one or more meal periods was not provided.

22 65. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
23 rest breaks and recovery periods, so they are entitled to recovery pursuant to Section 12(B) of the
24 applicable IWC Wage Order(s) and Labor Code Section 226.7, in the amount of one (1) additional
25 hour of pay at the employee's regular rate of compensation for each such rest period or recovery
26 period that is/was not provided to any member of the Class.

27 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

28 ///

Third Cause of Action
Failure to Pay Wages on Separation of Employment
(California Labor Code §§ 203, 2926, 2927)
(Against all Defendants)

66. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

67. California Labor Code Section 203, in pertinent part, provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

68. California Labor Code Section 2926, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who is dismissed by his employer is entitled to compensation for services rendered up to the time of such dismissal."

69. California Labor Code Section 2927, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting."

70. Numerous Class Members were employed by Defendants during the Class Period and were thereafter terminated or resigned from their positions, yet they were not paid all wages (including prevailing wage and premium overtime and double-time wages and wages for break violations) due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by the Defendants.

71. More than thirty days have elapsed since numerous Class Members were involuntarily terminated or voluntarily resigned from Defendants' employment.

72. As a direct and proximate result of Defendants' willful conduct in failing to pay said Class Members for all hours worked, these affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code Section 203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

Wherefore, Representative Plaintiffs pray for judgment as set forth below.

///

Fourth Cause of Action
Failure to Provide Accurate Itemized Wage Statements
(California Labor Code §§ 226 and 1174)
(Against all Defendants)

73. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

74. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(a) provided and provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

75. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(e)(1) provided and provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to

1 exceed an aggregate penalty of four thousand dollars (\$4,000), and is
2 entitled to an award of costs and reasonable attorney's fees.

3 76. Furthermore, during the relevant time period, since and including January 1, 2013,
4 California Labor Code Section 226(e)(2) provided and provides:

5 (A) An employee is deemed to suffer injury for purposes of this
6 subdivision if the employer fails to provide a wage statement.

7 (B) An employee is deemed to suffer injury for purposes of this
8 subdivision if the employer fails to provide accurate and complete
9 information as required by any one or more of items (1) to (9),
 inclusive, of subdivision (a) and the employee cannot promptly and
 easily determine from the wage statement alone one or more of the
 following:

10 (i) The amount of the gross wages or net wages paid to the
11 employee during the pay period or any of the other
12 information required to be provided on the itemized wage
 statement pursuant to items (2) to (4), inclusive, (6), and (9)
 of subdivision (a).

13 (ii) Which deductions the employer made from gross wages to
14 determine the net wages paid to the employee during the
 pay period. Nothing in this subdivision alters the ability of
 the employer to aggregate deductions consistent with the
 requirements of item (4) of subdivision (a).

15 (iii) The name and address of the employer and, if the employer
16 is a farm labor contractor, as defined in subdivision (b) of
 Section 1682, the name and address of the legal entity that
 secured the services of the employer during the pay period.

17 (iv) The name of the employee and only the last four digits of
18 his or her social security number or an employee
 identification number other than a social security number.

19 77. During the relevant time period, since and including January 1, 2012, California
20 Labor Code Section 1174(d) provided and provides:

21 Every person employing labor in this state shall . . . [k]eep, at a central
22 location in the state . . . payroll records showing the hours worked daily by
23 and the wages paid to . . . employees employed at the respective plants or
24 establishments. These records shall be kept in accordance with rules
25 established for this purpose by the commission, but in any case shall be
 kept on file for not less than three years. An employer shall not prohibit an
 employee from maintaining a personal record of hours worked, or, if paid
 on a piece-rate basis, piece-rate units earned.

26 78. Defendants have failed to provide timely, accurate itemized wage statements to the
27 Representative Plaintiffs and Class Members in accordance with California Labor Code Section
28 226. Representative Plaintiffs are informed and believe and, on that basis, allege that none of the

1 statements provided by Defendant accurately reflected accurate hours worked, gross wages earned,
 2 net wages earned, or the appropriate deductions of such Class Members. The wage statements also
 3 failed to identify the full name of the legal entity who employed them, as required by the statute.

4 79. Representative Plaintiffs seek to recover actual damages, costs, and attorneys' fees
 5 under these provisions on behalf of himself and on behalf of all Class Members.

6 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

7 **Fifth Cause of Action**
 8 **Failure to Produce Employment Records**
 9 **(California Labor Code §§ 226, 432, and 1198.5)**
 10 **(Against all Defendants)**

11 80. Representative Plaintiffs re-alleges and incorporate each and every allegation of the
 12 preceding paragraphs with the same force and effect as though fully set forth herein.

13 81. California Labor Code Section 226 states, in relevant part, that:

14 (b) An employer that is required by this code or any regulation adopted
 15 pursuant to this code to keep the information required by subdivision (a)
 16 shall afford current and former employees the right to inspect or copy
 17 records pertaining to their employment, upon reasonable request to the
 18 employer. The employer may take reasonable steps to ensure the identity
 19 of a current or former employee. If the employer provides copies of the
 20 records, the actual cost of reproduction may be charged to the current or
 21 former employee.

22 (c) An employer who receives a written or oral request to inspect or copy
 23 records pursuant to subdivision (b) pertaining to a current or former
 24 employee shall comply with the request as soon as practicable, but no later
 25 than 21 calendar days from the date of the request. A violation of this
 26 subdivision is an infraction. Impossibility of performance, not caused by
 27 or a result of a violation of law, shall be an affirmative defense for an
 28 employer in any action alleging a violation of this subdivision. An
 employer may designate the person to whom a request under this
 subdivision will be made....

(f) A failure by an employer to permit a current or former employee to
 inspect or copy records within the time set forth in subdivision (c) entitles
 the current or former employee or the Labor Commissioner to recover a
 seven-hundred-fifty-dollar (\$750) penalty from the employer....

(h) An employee may also bring an action for injunctive relief to ensure
 compliance with this section, and is entitled to an award of costs and
 reasonable attorney's fees.

82. Labor Code Section 432 states that "[i]f an employee or applicant signs any

1 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
2 instrument upon request."

3 83. California Labor Code Section 1198.5 states, in relevant part, that:

4
5 (a) Every current and former employee, or his or her representative, has
6 the right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee's performance or to any
8 grievance concerning the employee....

9 (b) (1) The employer shall make the contents of those personnel records
10 available for inspection to the current or former employee, or his or her
11 representative, at reasonable intervals and at reasonable times, but not later
12 than 30 calendar days from the date the employer receives a written
13 request, unless the current or former employee, or his or her
14 representative, and the employer agree in writing to a date beyond 30
15 calendar days to inspect the records, and the agreed-upon date does not
16 exceed 35 calendar days from the employer's receipt of the written
17 request. Upon a written request from a current or former employee, or his
18 or her representative, the employer shall also provide a copy of the
19 personnel records, at a charge not to exceed the actual cost of
20 reproduction, not later than 30 calendar days from the date the employer
21 receives the request, unless the current or former employee, or his or her
22 representative, and the employer agree in writing to a date beyond 30
23 calendar days to produce a copy of the records, as long as the agreed-upon
24 date does not exceed 35 calendar days from the employer's receipt of the
25 written request...

26 (k) If an employer fails to permit a current or former employee, or his or
27 her representative, to inspect or copy personnel records within the times
28 specified in this section, or times agreed to by mutual agreement as
provided in this section, the current or former employee or the Labor
Commissioner may recover a penalty of seven hundred fifty dollars (\$750)
from the employer...

(l) A current or former employee may also bring an action for injunctive
relief to obtain compliance with this section, and may recover costs and
reasonable attorney's fees in such an action.

84. On September 20, 2017 counsel for Plaintiffs counsel served a records request on
Defendants via certified mail requesting copies of the Plaintiffs' personnel records, including
payroll and timekeeping records and any records signed by the Plaintiffs, pursuant to Labor Code
sections 226(c), 432 and 1198.5. The September 20, 2017 records request included signed
authorizations from both Plaintiffs authorizing Defendants to release the records to their counsel in
this action.

85. Defendants failed to respond in any way to the records request and did not produce any of the requested employment records.

86. Plaintiffs are informed and believe and thereupon allege that Defendants common policy, applicable to all Class Members, is to not provide employment records upon request. Furthermore Plaintiffs are informed and believe and thereupon allege that certain putative Class Members have made requests, during the statutory period covered by this claim, for their employment records which Defendants did not comply with.

87. Representative Plaintiffs seek to recover penalties, costs, and attorneys' fees, as provided for in Labor Code Sections 226 and 1198.5, in an amount according to proof at trial. Wherefore, Representative Plaintiffs pray for judgment as set forth below.

Sixth Cause of Action
Unfair Business Practices Under the Unfair Competition Law
(California Business & Professions Code §§ 17200-17208)
(Against All Defendants)

88. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

89. California Business and Professions Code sections 17200, *et seq.* prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

90. Beginning at an exact date unknown to Representative Plaintiff, but continuing during the Class Period, Defendants committed unlawful acts as defined by California Business and Professions Code section 17200. Defendants' unlawful and unfair business practices include, but are not necessarily limited to, violations of the requirements of California Labor Code sections 201-204, 226, 226.7, 510, 512, 1194, 1197, 1198, 1198.5, 1770, *et seq.*, 2698-2699, *et seq.*, 2926, 2927, and the applicable Wage Order(s).

91. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business and Professions Code section 17200-17208. Specifically, Defendants conducted business activities while failing to comply with the legal mandates herein.

92. Defendants' knowing failure to adopt policies in accordance with, and/or to adhere

1 to these laws, all of which are binding upon and burdensome on its competitors, engenders an
 2 unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
 3 set forth in California Business and Professions Code Section 17208.

4 93. Business and Professions Code Section 17203 provides that the Court may restore
 5 to any person in interest any money or property which may have been acquired by means of such
 6 unfair competition. As a direct and proximate result of the aforementioned acts, Representative
 7 Plaintiffs and Class Members were injured and suffered the loss of money in the amount of, inter
 8 alia, unpaid wages that they were otherwise entitled to receive. Representative Plaintiffs and Class
 9 Members are entitled to restitution pursuant to Business and Professions Code section 17203 and
 10 17208 for all wages unlawfully withheld from them as a result of Defendants' unlawful and unfair
 11 conduct.

12 94. Representative Plaintiffs' success in this action will enforce important rights
 13 affecting the public interest. Representative Plaintiffs and the Plaintiff Class seek, and are entitled
 14 to, injunctive relief as well as all other appropriate equitable remedies. Injunctive relief is
 15 necessary and appropriate to prevent Defendants from repeating the wrongful business practices
 16 alleged herein.

17 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

18 **Seventh Cause of Action**
 19 **Recovery under Private Attorneys General Act (PAGA)**
 20 **(California Labor Code § 2698, *et seq.*)**
 21 **(Against All Defendants)**

22 95. Plaintiffs Jose Diaz Hermosillo and Oscar Diaz Hermosillo re-allege and
 23 incorporate each and every allegation of the preceding paragraphs with the same force and effect as
 24 though fully set forth herein.

25 96. Plaintiffs, as aggrieved employees, bring this claim pursuant to California Labor
 26 Code sections 2698-2699 on behalf of themselves and all other current or former employees
 27 employed by Defendant as Davey Tree Surgery Company and/or The Davey Tree Expert Company
 28 in California at any time for which recovery is authorized under Labor Code sections 2698-2699, *et seq.* Pursuant to California Labor Code Section 2699.3, on September 14, 2017, Representative

1 Plaintiffs submitted notice to the Labor and Workforce Development Agency through its website
2 of the specific provisions of the Labor Code that have been violated, including the facts and
3 theories to support those violations. Representative Plaintiffs served copies of the notice on the
4 Defendants via certified mail on September 13, 2017 and received return receipt confirming that
5 said notices were delivered on the Defendants. Representative Plaintiffs thus have complied with
6 the Private Attorneys General Act notice requirement as the 65-day time limit for a response has
7 passed with no response from the Labor and Workforce Development Agency notifying Plaintiffs
8 that the agency would investigate the claim.

9 97. As alleged above, Defendants have violated provisions of the California Labor
10 Code, including but not limited to failure to pay all wages owed, including overtime and double-
11 time, failure to provide timely duty free meal and rest periods or compensation for meal and rest
12 period violations, and failure to provide accurate wage statements. Representative Plaintiffs seek
13 recovery of unpaid wages resulting from said violations on behalf of themselves and all other
14 current or former employees employed by Defendants as Davey Tree Surgery Company and/or
15 The Davey Tree Expert Company in California at any time for which recovery is authorized under
16 California Labor Code sections 2698-2699.

17 98. Pursuant to California Labor Code Section 2699, Representative Plaintiffs also seek
18 recovery of all penalties for Defendants' above-described violations of the California Labor Code
19 that are available under PAGA. Such penalties for which Representative Plaintiffs now seek
20 recovery include, but are not limited to, those set forth in California Labor Code sections 1771 and
21 1774 (prevailing wages and associated penalties) and 558 (for causing the labor code violations
22 plead herein).

23 99. Representative Plaintiffs request an award of attorneys' fees and costs, including as
24 authorized under California Labor Code Section 2699.

25 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

26 **RELIEF SOUGHT**

27 **WHEREFORE**, the Representative Plaintiffs, on behalf of themselves and the proposed
28 Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each

1 of them, jointly and separately, as follows:

2 1. That the Court declare, adjudge, and decree that this action is a proper class action
3 and certify the proposed class and/or any appropriate subclasses under California Code of Civil
4 Procedure Section 382;

5 2. That the Court declare, adjudge, and decree that Defendants violated the provisions
6 of the California Labor Code and the applicable California Industrial Welfare Commission Wage
7 Order(s) as to the Representative Plaintiffs and Class Members as alleged herein;

8 3. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
9 minimum, overtime, and double-time wage compensation (pursuant to California Labor Code
10 sections 510, 1194);

11 4. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
12 statutory prevailing wage and per diem compensation (pursuant to California Labor Code sections
13 1771 & 1774);

14 5. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
15 at each employee's regular rate of compensation for each workday on which a meal period(s) was
16 not provided (pursuant to California Labor Code Section 226.7);

17 6. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
18 at each employee's regular rate of compensation for each workday on which a rest period(s) was
19 not provided (pursuant to California Labor Code Section 226.7);

20 7. That the Court make an award to the Plaintiffs and Plaintiff Class of "waiting time"
21 penalties (pursuant to California Labor Code Section 203);

22 8. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
23 provide accurate wage statements (pursuant to Labor Code Section 226);

24 9. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
25 produce employment records upon request (pursuant to Labor Code sections 226 and 1198.5);

26 10. That the Court make an award to the Plaintiffs and Plaintiff Class of penalties,
27 pursuant to California Labor Code sections 2926-2927;

28 11. That the Court order Defendants to pay restitution to the Plaintiffs and Plaintiff

1 Class, pursuant to California Business and Professions Code sections 17200-17208;

2 12. That the Court enjoin Defendants, ordering them to cease and desist from unlawful
3 activities in violation of California Business and Professions Code Section 17200, *et seq.*;

4 13. That the Court order Defendants to pay penalties pursuant to the Private Attorneys
5 General Act, California Labor Code sections 2698-2699, *et seq.*;

6 14. For all other Orders, findings and determinations identified and sought in this
7 Complaint;

8 15. For interest on the amount of any and all economic losses, at the prevailing legal
9 rate;

10 16. For reasonable attorneys' fees, pursuant to California Labor Code sections 218.5,
11 226, 1194, 1198.5, 2699, *et. seq.* and/or California Code of Civil Procedure Section 1021.5; and;

12 17. For costs of suit and any and all such other relief as the Court deems just and
13 proper.

14 Dated: December 7, 2017

Respectfully submitted,

15
16 By:



17 Kevin Allen, Esq.
18 VELTON ZEGELMAN, PC
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28

DEMAND FOR JURY TRIAL

Representative Plaintiffs and the proposed Plaintiff Class hereby demand a jury trial for each cause of action for which they are entitled to a jury trial.

Dated: December 7, 2017

Respectfully submitted,

By:



Kevin Allen, Esq.
VELTON ZEGELMAN, PC

EXHIBIT C



**Service of Process
Transmittal**

12/19/2017

CT Log Number 532498407

TO: Heather Micozzi
The Davey Tree Expert Company
1500 N Mantua St
Kent, OH 44240-2399

RE: Process Served in California

FOR: The Davey Tree Expert Company (Domestic State: OH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JOSE DIAZ HERMOSILLO, et al., Pltfs. vs. DAVEY TREE SURGERY COMPANY, etc., et al., Dfts.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Instructions, Complaint, Demand, Reports

COURT/AGENCY: Santa Clara County - Superior Court - San Jose, CA
Case # 17CV320135

NATURE OF ACTION: Defendants violated California Labor Code Section 1174 by failing to keep accurate records of employees' hours of work

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 12/19/2017 at 15:00

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): KEVIN ALLEN
VELTON ZEGELMAN P.C
1261 Lincoln Avenue, Suite 208
San Jose, CA 95125
(408) 505-7892

ACTION ITEMS: CT has retained the current log, Retain Date: 12/20/2017, Expected Purge Date: 12/25/2017

Image SOP

Email Notification, Heather Micozzi heather.micozzi@davey.com

Email Notification, Rene Tatka rene.tatka@davey.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

12/19/17 @BPR

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

DAVEY TREE SURGERY COMPANY, an Ohio Corporation; THE
DAVEY TREE EXPERT COMPANY, an Ohio Corporation; and DOES
1 through 50, inclusive
**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JOSE DIAZ HERMOSILLO, OSCAR DIAZ HERMOSILLO on behalf
of themselves and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED

12/7/2017 10:24 AM

Clerk of Court

Superior Court of CA,

County of Santa Clara

17CV320135

Reviewed By: R. Walker

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tienes 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara Superior Court
191 N. First Street, San Jose, CA 95113

17CV320135

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kevin Allen, Velton Zegelman P.C., 1261 Lincoln Avenue, Suite 208, San Jose, CA 95125; (925) 695-4913

DATE: 12/7/2017 10:24 AM Clerk of Court

Clerk, by
(Secretario)

R. Walker

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): THE DAVEY TREE EXPERT COMPANY, an Ohio Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin R. Allen (SBN 237994) Velton Ziegelman P.C. 1261 Lincoln Avenue, Suite 208 San Jose, California 95125 TELEPHONE NO.: 925.695.4913 FAX NO.: 925.334.7477 ATTORNEY FOR (Name): Jose Diaz Hermosillo, Oscar Diaz Hermosillo		FOR COURT USE ONLY E-FILED 12/7/2017 10:24 AM Clerk of Court Superior Court of CA, County of Santa Clara 17CV320135 Reviewed By: R. Walker
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. 1st Street MAILING ADDRESS: 191 N. 1st Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Courthouse		
CASE NAME: Hermosillo et al. v. Davey Tree Surgery Co., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 17CV320135 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandato (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary: declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 7

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 7, 2017

Kevin R. Allen

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos (04)	Collection Case—Seller Plaintiff	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Other Coverage	Confession of Judgment (non-domestic relations)
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Sister State Judgment
Other Professional Health Care Malpractice	Contractual Fraud	Administrative Agency Award (not unpaid taxes)
Other PUPD/WD (23)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Real Property	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	RICO (27)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (28)	Other Complaint (not specified above) (42)
Other PUPD/WD	Writ of Possession of Real Property	Dedatory Relief Only
Non-PUPD/WD (Other) Tort	Mortgage Foreclosure	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Quiet Title	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	Commercial (31)	Miscellaneous Civil Petition
Intellectual Property (19)	Residential (32)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Other Petition (not specified above) (43)
Legal Malpractice	Judicial Review	Civil Harassment
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Workplace Violence
Other Non-PUPD/WD Tort (35)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Employment	Writ of Mandate (02)	Election Contest
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Name Change
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ—Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

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Superior Court of CA,
County of Santa Clara
17CV320135
Reviewed By: R. Walker

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10 Attorneys for Representative Plaintiffs
and the Plaintiff Class

11 IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13 (UNLIMITED JURISDICTION)
14

15 JOSE DIAZ HERMOSILLO, OSCAR DIAZ
16 HERMOSILLO on behalf of themselves and all
17 others similarly situated,

18 Plaintiffs,

19 vs.

20 DAVEY TREE SURGERY COMPANY, an
21 Ohio Corporation; THE DAVEY TREE
22 EXPERT COMPANY, an Ohio Corporation;
and DOES 1 through 50, inclusive,

23 Defendants.
24
25
26
27
28

Case No.

17CV320135

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

DEMAND FOR JURY TRIAL

1 Representative Plaintiffs JOSE DIAZ HERMOSILLO and OSCAR DIAZ HERMOSILLO
2 complain and allege as follows:

3 **PRELIMINARY STATEMENT**

4 1. This is a class action, brought on behalf of Plaintiffs JOSE DIAZ HERMOSILLO
5 and OSCAR DIAZ HERMOSILLO ("Plaintiffs" or "Representative Plaintiffs") and all other
6 persons similarly situated (collectively "Class Members") who are or have been employed as non-
7 exempt tree care service employees (including but not limited to those holding the job titles of
8 "laborer," "groundman," "apprentice climber," "climber," "climbing arborist," "climbing arborist
9 trainee," and "trimmer") by Defendants DAVEY TREE SURGERY COMPANY ("DTSC"), THE
10 DAVEY TREE EXPERT COMPANY ("DTEC"), and DOES 1-50, inclusive (hereinafter,
11 collectively "Defendants") in California within the applicable Class Period (referred to herein as
12 "Class Members" or "Tree Trimmers"). Representative Plaintiffs, on behalf of themselves and the
13 Class Members, seek unpaid wages including regular wages, overtime wages, double-time wages,
14 prevailing wages, compensation for missed meal and rest periods, penalties for inaccurate wage
15 statements and late payment of wages, interest thereon, related penalties, injunctive and other
16 equitable relief, and reasonable attorneys' fees and litigation costs pursuant to, *inter alia*., Title 8 of
17 the California Code of Regulations, California Business and Professions Code sections 17200, *et*
18 *seq.*, California Code of Civil Procedure Section 1021.5, and various provisions of the California
19 Labor Code.

20 2. The "Class Period" is defined as the four years prior to the date on which this
21 Complaint was initially filed and continuing through the present time, based upon the allegation
22 that the violations of California's wage and hour laws, as described more fully below, have been
23 ongoing throughout that time.

24 3. During the Class Period, Representative Plaintiffs allege, on information and belief,
25 that Defendants have had a consistent policy of (1) unlawfully failing to pay Representative
26 Plaintiffs and Class Members prevailing wages, as required by California Labor Code Section
27 1771; (2) failing to pay Representative Plaintiffs and Class Members for all hours worked, by
28 including but not limited to shaving off hours worked by Representative Plaintiffs and members of

the class by rounding of their punch times; (3) failing to pay Representative Plaintiffs and Class Members overtime wages for more than 8 hours of work in a work-day and/or more than 40 hours in a work-week; (4) failing to pay Representative Plaintiffs and Class Members double-time wages for more than 12 hours of work in a work-day and for wages earned over 8 hours worked on the seventh day worked in a work-week; (5) unlawfully failing to provide Representative Plaintiffs and Class Members with timely, statutorily-mandated meal and rest periods and/or failing to properly compensate them for meal and rest period violations; (6) willfully failing to provide Representative Plaintiffs and Class Members with accurate semi-monthly itemized wage statements that correctly identified the name of the employer; (7) willfully failing to pay compensation owed in a prompt and timely manner to Representative Plaintiffs and Class Members whose employment with Defendants has terminated; and (8) violating California's Unfair Competition Law (the "UCL").

INTRODUCTION

4. Defendant DAVEY TREE SURGERY COMPANY ("DTSC") is a registered Ohio Corporation, who is a licensed and bonded contractor in the state of California performing professional tree services on public works projects in Santa Clara County.

5. Defendant THE DAVEY TREE EXPERT COMPANY ("DTEC") is a registered Ohio Corporation with its headquarters in Kent, Ohio, who is a licensed and bonded contractor in the state of California performing professional tree services on public works projects in Santa Clara County.

6. Representative Plaintiffs allege, based on information and belief, that during the relevant Class Period Defendants DTSC and DTEC have employed hundreds of employees in California in positions that did not, and currently do not, meet any known test for exemption from the payment of minimum and overtime wages, and/or the entitlement to accurate itemized wage statements and meal and rest periods. Representative Plaintiffs are also informed and believe and based thereon allege that Defendants DTSC and DTEC actively sought, engaged in, and employed Plaintiffs and similarly situated Class Members on public works projects subject to prevailing wage statutes.

7. Despite actual knowledge of these facts and legal mandates. Defendants had and

1 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
2 by electing not to pay prevailing wage rates, not to pay Representative Plaintiffs and class
3 members wages owed for all hours worked by, *inter alia*, "shaving" hours and rounding punch
4 times, not paying statutorily required regular and overtime wages as well as prevailing wages, not
5 providing off-duty, timely meal and rest periods or compensation therefore, not providing accurate
6 wage statements, and not providing all wages due and owing upon employees' termination in a
7 timely manner.

8 8. Representative Plaintiffs are informed and believe and, based thereon, allege that
9 officers and managing agents of defendant DTSC and DTEC, knew of these facts and legal
10 mandates yet, nonetheless, repeatedly authorized and/or ratified the violations of the laws cited
11 herein.

12 9. Despite Defendants' knowledge of Representative Plaintiffs and Class Members'
13 entitlement to prevailing wages, wages for all hours worked, premium wages for daily and weekly
14 overtime hours worked, meal and rest periods or break violation pay for all applicable work
15 periods, and accurate wage statements, Defendant failed to provide the same to Representative
16 Plaintiffs and Class Members, in violation of the California Labor Code and Business and
17 Professions Code, the applicable California Industrial Welfare Commission Wage Order and Title
18 8 of the California Code of Regulations. Moreover, Defendants failed to pay all final wages to
19 those Plaintiffs and Class Members whose employment has terminated.

20 10. This action is brought to redress and end this long-time pattern of unlawful conduct
21 once and for all. Despite actual knowledge of these facts and legal mandates, Defendants have and
22 continue to enjoy an advantage over their competition and a imposed a resultant disadvantage to its
23 workers by electing not to pay premium wages (e.g., overtime, double-time, prevailing wages,
24 meal and rest period wages) and/or penalties to which they are entitled (e.g., "waiting time,"
25 "wages statement," "underpayment," and/or "Private Attorney General Act" penalties) to their
26 Tree Trimmers in California.

27 JURISDICTION AND VENUE

28 11. This Court has jurisdiction over this action because the amount in controversy

1 exceeds \$25,000.

2 12. Pursuant to California Code of Civil Procedure section 395(a), venue is proper in
3 the County of Santa Clara because Defendants' obligations and liability arose, at least in part,
4 therein, and because the alleged injuries sustained by Representative Plaintiffs, as well as other
5 Class Members, occurred in the County of Santa Clara.

6 **PLAINTIFF**

7 13. Representative Plaintiffs bring this action against Defendants, for engaging in a
8 uniform policy and systematic scheme of wage abuse against their Tree Trimmers in California.
9 This scheme involved, *inter alia*, failing to pay Plaintiffs and other Tree Trimmers all prevailing
10 wages owed as well as denying them regular, overtime, and double-time compensation for all
11 applicable hours worked. Further, Defendants did not provide timely, off-duty meal or rest breaks
12 for Tree Trimmers, or break violation pay, as mandated under California law.

13 14. As used through this Complaint, the term "Class Members" refers to the
14 Representative Plaintiffs herein as well as each and every person eligible for membership in the
15 Class as described and defined herein.

16 15. Representative Plaintiff Jose Diaz Hermosillo is a natural person who was
17 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
18 August 2017. At all times herein relevant, Representative Plaintiff Jose Diaz Hermosillo was and is
19 now a person within the Class as further described and defined therein.

20 16. Representative Plaintiff Oscar Diaz Hermosillo is a natural person who was
21 employed by Defendants as a Tree Trimmer from approximately October 2015 until approximately
22 August 2017. At all times herein relevant, Representative Plaintiff Oscar Diaz Hermosillo was and
23 is now a person within the Class as further described and defined therein.

24 17. During their employment, Representative Plaintiffs and members of the class were
25 not paid a prevailing wage rate, pursuant to California Labor Code Section 1771.

26 18. Moreover, Representative Plaintiffs and members of the class were not paid for all
27 hours worked due to the illegal practice by Defendants of not compensating Representative
28 Plaintiffs and members of the class for all hours worked. By way of example, Defendants engaged

1 in an uniform policy and systematic scheme of wage theft by rounding their punch times so that
2 Representative Plaintiffs and members of the class were not paid for all of their hours worked.

3 19. Furthermore, during the Class Period, Representative Plaintiffs and Class Members
4 worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek.
5 Representative Plaintiffs and Class Members, during the Class Period, also worked, on many
6 occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day in a
7 workweek. However, despite the aforementioned, Defendants denied Plaintiffs and Class Members
8 all of the overtime and double-time compensation to which they were owed.

9 20. In addition, Representative Plaintiffs routinely worked for Defendants without being
10 provided with timely, off-duty, net ten minute rest periods for every four hours worked or major
11 fraction thereof, without being provided with a thirty minute uninterrupted, duty-free meal period
12 during meal period eligible shifts, or a second thirty minute uninterrupted duty-free meal period
13 during shifts lasting ten hours or more, and without being provided with recovery periods or clean
14 drinking water, and without being paid one (1) hour of pay at the employee's regular rate of
15 compensation for each work day that a meal or rest period or recovery period was not provided.
16 Representative Plaintiffs allege, on information and belief, these meal and rest break and recovery
17 period violations were the result of policies and procedures that applied uniformly to all Class
18 Members during the Class Period. Furthermore, Representative Plaintiffs worked shifts of ten
19 hours or more but did not receive a second meal period or third rest break.

20 21. As a result of the above violations, Representative Plaintiffs' wage statements did
21 not reflect the actual number of hours worked and the lawful wages due thereon, and were
22 therefore inaccurate.

23 22. On September 20, 2017 counsel for Plaintiffs served a records request on both
24 Defendants via certified mail which requested copies of their personnel records (including payroll
25 and timekeeping records and any records signed by the Plaintiffs) pursuant to Labor Code sections
26 226(c), 432 and 1198.5. The records request included signed authorizations from both Plaintiffs
27 authorizing Defendants to release the records to their counsel in this action. Defendants failed to
28 respond to the records request and, as of the date this complaint is being filed, had still not

1 produced any of the requested employment records.

2 23. The Representative Plaintiffs bring this action on behalf of themselves and as a
3 class action, pursuant to California Code of Civil Procedure section 382, on behalf of all persons
4 similarly situated and proximately damaged by the unlawful conduct described herein.

5 DEFENDANTS

6 24. Representative Plaintiffs are informed and believe and, based thereon, allege that at
7 all times herein relevant, Defendants DTSC and DTEC were and are registered Ohio Corporations,
8 who are licensed and bonded contractors in the state of California performing professional tree
9 services on public works projects.

10 25. The true and correct names and capacities of DOES 1 through 50, inclusive, are
11 unknown to Representative Plaintiffs, who therefore sue said Defendants by such fictitious names.
12 Representative Plaintiffs are informed and believe and thereon allege that each of said fictitious
13 Defendants caused injury and damages to Representative Plaintiffs.

14 26. Defendants DOES 1 through 10 are individuals employed by Defendants.

15 27. At all times relevant herein, Defendants and DOES 11-50 inclusive were and are
16 employer(s) and person(s) within the definition of California Labor Code Section 18, the
17 applicable Industrial Wage Order, and California Business and Professions Code Section 17201.

18 28. The Representative Plaintiffs are informed and believe and, on that basis, allege that
19 at all relevant times herein mentioned each of the Defendants, including DOES 1 through 50, were
20 the agents, employees, supervisors, employers, alter egos, and/or joint ventures of the remaining
21 defendants, and were acting both individually and in the course and scope of such relationship,
22 and/or as an integrated enterprise, and/or as joint employers, with the knowledge and/or consent of
23 the remaining Defendants.

24 CLASS AND COLLECTIVE ACTION ALLEGATIONS

25 29. Representative Plaintiffs bring this action individually and as a class action on
26 behalf of all persons similarly situated and proximately damaged by Defendants' conduct,
27 including but not limited to the following class ("Class Members" or "the Plaintiff Class"):

28 All non-exempt Tree Trimmers employees (including but not limited to
those holding the job titles of "laborer," "groundman," "apprentice

climber," "climber," "climbing arborist," "climbing arborist trainee," and "trimmer") who were employed by Defendants in the State of California at any time during the four years preceding the filing of this Complaint through to the present.

30. Defendants, their officers, and directors are excluded from the Plaintiff Class.

31. This action has been brought and may be properly maintained as a class action pursuant to California Code of Civil Procedure Section 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable as follows:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendants.
- b. Commonality: The Representative Plaintiffs and the class members share a community of interests, in part, since there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under Section 382. These common questions include, but are not necessarily limited to:
 - i. Whether Defendants violated California Labor Code sections 1771 and 1774 by failing to pay prevailing wages and/or prevailing per diem wages to their employees on public works projects;
 - ii. Whether Defendants engaged in a pattern or practice of failing to pay Class Members for all hours worked, including but not limited to shaving off hours worked by Representative Plaintiffs and members of the class by rounding of their punch times
 - iii. Whether Defendants violated the applicable IWC Wage Order and/or Labor Code Section 510 by failing to pay overtime to its employees who worked in excess of forty hours per week and/or eight hours per day;
 - iv. Whether Defendants violated the applicable IWC Wage Order and/or Labor Code Section 510 by failing to pay double-time to its employees who worked in excess of 12 hours per day and hours in excess of 8 on any seventh work-day in a work week;
 - v. Whether Defendants violated California Labor Code Section 1194(a) by failing to pay minimum, overtime, and/or double-time wages to its employees;
 - vi. Whether Defendants violated California Labor Code sections 226.7 and 512 by failing to provide Class Members, for each work period of more than five hours per day, with an off-duty meal period of at least 30 minutes, and, for each work period of four hours or major fraction thereof, a net ten minute rest period, without any compensation therefore;

- vii. Whether Defendants violated California Labor Code Section 1174 by failing to keep accurate records of employees' hours of work;
 - viii. Whether Defendants violated California Labor Code sections 201-204 by failing to pay regular, overtime, or double-time wages and meal and rest period (or recovery period) violation wages due and owing at the time certain Class Members' employment with Defendants terminated;
 - ix. Whether Defendants violated California Labor Code Section 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period;
 - x. Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code Section 203;
 - xi. Whether Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to (1) pay prevailing wage rates pursuant to Lab. Code Section 1771 (2) pay overtime compensation to its employees who worked in excess of forty hours per week and/or eight hours per day, (3) pay double-time to its employees who worked in excess of 12 hours per day and hours in excess of 8 on any seventh work-day in a work week (4) pay meal period premiums to its employees who worked in excess of five consecutive hours without a meal period, (5) pay rest period and/or recovery period premiums to its employees for each four hour period (or major fraction thereof) worked without a rest period or applicable recovery period, (6) provide accurate wage statements, and (7) pay all wages for all hours worked due promptly upon Class Members' resignation or termination;
 - xii. Whether Defendants owe penalties for the above-listed violations pursuant to California Labor Code Section 2698, *et seq.*; and,
 - xiii. Whether class-wide injunctive relief is an appropriate remedy by which to prevent and/or halt the violations alleged herein from continuing; and.
- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of the law, as alleged herein.
- d. Superiority of a Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: Each Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that each Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interest in the litigation of this case as the Class Members. Each Representative Plaintiff is

1 committed to vigorous prosecution of this case and has retained competent counsel who are
2 experienced in conducting litigation of this nature. The Representative Plaintiffs are not
3 subject to any individual defenses unique from those conceivably applicable to Class
Members as a whole. The Representative Plaintiffs anticipate no management difficulties
in this litigation.

4 COMMON FACTUAL ALLEGATIONS

5 32. As described herein, for years, Defendants have knowingly failed to adequately
6 compensate those employees within the class definition identified above for all wages earned
7 (including premium wages such as overtime wages and/or compensation for missed meal and/or
8 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
9 enjoying a significant competitive edge over Defendants' competitors.

10 33. Defendants' wage policies failed to pay Representative Plaintiffs and Class
11 Members with a prevailing wage rate as required by California Labor Code Section 1771, with
12 overtime wages for each hour worked beyond 8 in a work-day and 40 in a work-week, or double-
13 time to employees who worked in excess of 12 hours per day and for hours in excess of 8 on any
14 seventh work-day in a work week as required under the California Labor Code and the applicable
15 IWC Wage Order(s).

16 34. Defendants' meal and rest period policies failed to provide Representative Plaintiffs
17 and Class Members a net 10-minute rest period for every four hours worked or major fraction
18 thereof and an uninterrupted 30-minute meal period for working five hours or more, nor did
19 Defendants' meal and rest period policies provide second meal periods and third rest breaks for
20 shifts of ten hours or more, or provide compensation to Representative Plaintiffs and Class
21 Members for meal and/or rest break violations. Defendants' policies also failed to provide class
22 members with adequate recovery periods, shade, and clean drinking water as required under
23 California law.

24 35. California Labor Code sections 201 and 202 require Defendants to pay severed
25 employees all wages due and owed to the employee immediately upon discharge or within 72
26 hours of resignation of their positions, in most circumstances. California Labor Code § 203
27 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue
28 to pay the subject employees' wages until the back wages are paid in full or an action is

1 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

2 36. Furthermore, Defendants failed to provide the Representative Plaintiffs and Class
3 Members with accurate semimonthly itemized statements of the total number of hours worked by
4 each, and all applicable hourly rates in effect, during the pay period, in violation of California
5 Labor Code Section 226. In failing to provide the required documents, Defendants have not only
6 failed to pay its workers the full amount of compensation due but have also, until now, effectively
7 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
8 wrongdoing that such documents might otherwise have led workers to discover.

9 37. Representative Plaintiffs and all persons similarly situated are also entitled to
10 compensation for all hours worked. By way of example, Defendants engaged in a pattern or
11 practice of failing to pay Class Members for all hours worked, including but not limited to shaving
12 off hours worked by Representative Plaintiffs and members of the class by rounding of their punch
13 times.

14 38. Under California Labor Code sections 226(c), 432, and 1198.5, collectively, an
15 employee has a right to inspect (or obtain copies of) his or her personnel file, payroll and time
16 records, and documents signed by the employee relating to their obtaining or holding employment
17 with the employer. Despite Representative Plaintiffs' request for these documents, Defendants
18 failed to produce any of the requested documents in a timely manner, as required by statute, or to
19 even respond to the request. Defendants failure to comply with these requests further evidences
20 their intent to hide the full impact of their wrongdoing from employees. Plaintiffs seek injunctive
21 relief ordering the Defendants to produce the requested records and to pay penalties, attorneys'
22 fees and costs due to their non-compliance.

23 39. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Representative Plaintiffs and Class Members have sustained damages, as described above,
25 including compensation for loss of earnings for hours worked on behalf of Defendants in an
26 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
27 conduct, as set forth herein, Representative Plaintiffs and certain Class Members are entitled to
28 recover penalties for failure to provide semimonthly statements of hours worked and all applicable

1 hourly rates (pursuant to Labor Code Section 226) in an amount to be established at trial. As a
 2 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
 3 Representative Plaintiffs and Class Members are also entitled to recover costs and attorneys' fees
 4 pursuant to California Labor Code sections 218.5, 1194 and/or California Civil Code Section
 5 1021.5, among other authorities.

6 40. Representative Plaintiffs seek injunctive relief prohibiting Defendants from
 7 engaging in the complained-of illegal labor acts and practices in the future. Representative
 8 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
 9 under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
 10 continue unchecked, while the Representative Plaintiffs and Class Members bear the financial
 11 brunt of Defendants' unlawful conduct. As a further direct and proximate result of Defendants'
 12 unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class are also
 13 entitled to recover costs and attorneys' fees, pursuant to statute.

14 **First Cause of Action**
 15 **Failure to Pay Wages Owed**
 16 **(Violation of California Wage Orders and Labor Code §§ 510, 1194, 1197, 1198, 1771, 1774)**
 17 **(Against all Defendants)**

18 41. Representative Plaintiffs incorporate in this cause of action each and every
 19 allegation of the preceding paragraphs with the same force and effect as though fully set forth
 20 herein.

21 42. At all relevant times, Defendants were aware of, and under a duty to comply with,
 22 the provisions of the California Labor Code including, but not limited to, California Labor Code
 23 sections 510, 1194, 1198, 1771, and 1774.

24 43. California Labor Code Section 510(a), in pertinent part, provides:

25 Any work in excess of eight hours in one workday and any work in excess
 26 of 40 hours in any one workweek and the first eight hours worked on the
 27 seventh day of work in any one workweek shall be compensated at the rate
 of no less than one and one-half times the regular rate of pay for an
 employee. Any work in excess of 12 hours in one day shall be
 compensated at the rate of no less than twice the regular rate of pay for an
 employee. In addition, any work in excess of eight hours on any seventh
 day of a workweek shall be compensated at the rate of no less than twice
 the regular rate of pay of an employee.

28 44. California Labor Code Section 1194(a), in pertinent part, provides:

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

5 45. California Labor Code Section 1198, in pertinent part, provides:

6 The maximum hours of work and the standard conditions of labor fixed by
7 the commission shall be the maximum hours of work and the standard
8 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

9 46. California Labor Code Section 1771 provides:

10 Except for public works projects of one thousand dollars (\$1,000) or less, not less
11 than the general prevailing rate of per diem wages for work of a similar character in
12 the locality in which the public work is performed, and not less than the general
prevailing rate of per diem wages for holiday and overtime work fixed as provided
in this chapter, shall be paid to all workers employed on public works.

13 47. California Labor Code Section 1774 provides:

14 The contractor to whom the contract is awarded, and any subcontractor under him,
15 shall pay not less than the specified prevailing rates of wages to all workmen
employed in the execution of the contract.

16 48. Plaintiffs allege, on information and belief, that the public works projects at issue
17 during the Class Period exceed \$1,000.00.

18 49. During the Class Period, Representative Plaintiffs and Class Members worked, on
19 many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise
20 number of overtime hours will be proven at trial.

21 50. During the Class Period, Representative Plaintiffs and Class Members worked, on
22 many occasions, in excess of 12 hours in a workday and/or in excess of 8 on any seventh work-day
23 in a workweek. The precise number of double-time hours will be proven at trial.

24 51. During the Class Period, Defendants refused and/or failed to compensate
25 Representative Plaintiffs and Class Members for all of the overtime wages earned, in violation of
26 the applicable IWC Wage Order and provisions of the California Labor Code.

27 52. Moreover, during said time period, Representative Plaintiffs and many of the Class
28 Members were employed by and thereafter terminated or resigned from their positions with

1 Defendants, yet were not paid all overtime or double-time wages due upon said termination or
2 within 72 hours of said resignation of employment therefrom. Said non-payment of all wages due
3 was the direct and proximate result of a willful refusal to do so by the Defendants.

4 53. During the Class Period, Representative Plaintiffs and Class Members were not
5 compensated for all hours worked. By way of example, Defendants engaged in a pattern or
6 practice of failing to pay Class Members for all hours worked, including but not limited to
7 rounding punch times for Representative Plaintiffs and members of the class. The precise number
8 of unpaid hours in this category will be proven at trial.

9 54. By refusing to compensate Representative Plaintiffs and Class Members for
10 overtime and double-time wages earned, Defendants violated those California Labor Code
11 provisions cited herein as well as the applicable IWC Wage Order(s).

12 55. At all times during the relevant Class Period, Defendants were subject to the
13 prevailing wage laws of the State of California, including Labor Code sections 1771 and 1774, for
14 all work undertaken on public works projects. Pursuant to Labor Code Section 1771, Defendants
15 were mandated to pay their employees working on such public work projects, including Plaintiffs
16 and all applicable Class Members, not less than the general prevailing rate of per diem wages for
17 work of a similar character in the locality in which the public work was performed and not less
18 than the general prevailing rate of per diem wages for holiday, overtime, and double-time work.

19 56. The applicable per diem wages and prevailing wages required pursuant to Labor
20 Code sections 1194, 1771, and 1774 are set forth in annual and semi-annual bulletins published by
21 the California Department of Industrial Relations.

22 57. As a direct and proximate result of Defendants' unlawful conduct, as set forth
23 herein, Representative Plaintiffs and the Class Members sustained damages, including loss of
24 earnings for hours of overtime and double-time worked for Defendants in an amount to be
25 established at trial, and are entitled to recover attorneys' fees and costs of suit.

26 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

27 ///

28 ///

Second Cause of Action
Failure to Provide Meal and Rest Periods or Pay Meal and Rest Period Premiums
(California Labor Code §§ 226.7 and 512)
(Against all Defendants)

58. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

59. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of meal periods to non-exempt employees in California. The applicable wage order indicates that "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee." Furthermore, the wage order indicates that "an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

60. California Labor Code Section 512(a) and applicable California Wage Orders set for the minimum requirements for the provision of rest breaks to non-exempt employees in California. The applicable wage order indicates that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

61. Furthermore, California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a required recovery period break for days in which a worker works in weather conditions of 85 degrees Fahrenheit or above while being exposed to the sun. Further, the law requires an employer in such

1 a situation to provide clean drinking water, shade, and an appropriate amount of time to recover.
2 On information and belief, Representative Plaintiffs and the Class consistently worked when it was
3 85 degrees Fahrenheit in direct exposure to the sun. Moreover, Representative Plaintiffs and the
4 Class was not provided with clean drinking water and shade on such occasions. Defendants failed
5 to provide Representative Plaintiffs and the Class with recovery period breaks, shade, and clean
6 drinking water and failed to provide the hour of compensation for recovery periods missed.

7 62. Pursuant to the above provisions, Representative Plaintiffs and Class Members are
8 entitled to meal periods in which they were relieved of all job duties. Instead, Representative
9 Plaintiffs believe, and thereupon allege, that Defendants did not provide Representative Plaintiffs
10 and Class Members with sufficient timely, thirty-minute uninterrupted meal periods. Moreover, no
11 "on duty" written meal period agreement and/or waiver, valid or otherwise, affected Representative
12 Plaintiffs and the Class Members' entitlement to meal periods. Thus, Defendants violated
13 California Labor Code sections 226.7 and 512 and applicable Wage Orders.

14 63. Representative Plaintiffs are informed and believe, and thereupon allege, that
15 Defendants required Representative Plaintiffs and Class Members to work without receiving timely
16 meal periods and rest breaks to which they were entitled, including second meal periods and third
17 rest breaks.

18 64. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
19 a lawful meal period, so they are entitled to recovery pursuant to California Labor Code section
20 226.7, subdivision (b), in the amount of one additional hour of pay at the employee's regular rate of
21 compensation for each day on which one or more meal periods was not provided.

22 65. Defendants' unlawful acts deprived Representative Plaintiffs and Class Members of
23 rest breaks and recovery periods, so they are entitled to recovery pursuant to Section 12(B) of the
24 applicable IWC Wage Order(s) and Labor Code Section 226.7, in the amount of one (1) additional
25 hour of pay at the employee's regular rate of compensation for each such rest period or recovery
26 period that is/was not provided to any member of the Class.

27 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

28 ///

Third Cause of Action
Failure to Pay Wages on Separation of Employment
(California Labor Code §§ 203, 2926, 2927)
(Against all Defendants)

66. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

67. California Labor Code Section 203, in pertinent part, provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

68. California Labor Code Section 2926, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who is dismissed by his employer is entitled to compensation for services rendered up to the time of such dismissal."

69. California Labor Code Section 2927, in pertinent part, provides that "[a]n employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting."

70. Numerous Class Members were employed by Defendants during the Class Period and were thereafter terminated or resigned from their positions, yet they were not paid all wages (including prevailing wage and premium overtime and double-time wages and wages for break violations) due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by the Defendants.

71. More than thirty days have elapsed since numerous Class Members were involuntarily terminated or voluntarily resigned from Defendants' employment.

72. As a direct and proximate result of Defendants' willful conduct in failing to pay said Class Members for all hours worked, these affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code Section 203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

Wherefore, Representative Plaintiffs pray for judgment as set forth below.

///

Fourth Cause of Action
Failure to Provide Accurate Itemized Wage Statements
(California Labor Code §§ 226 and 1174)
(Against all Defendants)

73. Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

74. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(a) provided and provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

75. During the relevant time period, since and including January 1, 2013, California Labor Code Section 226(c)(1) provided and provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to

1 exceed an aggregate penalty of four thousand dollars (\$4,000), and is
2 entitled to an award of costs and reasonable attorney's fees.

3 76. Furthermore, during the relevant time period, since and including January 1, 2013,
4 California Labor Code Section 226(e)(2) provided and provides:

5 (A) An employee is deemed to suffer injury for purposes of this
6 subdivision if the employer fails to provide a wage statement.

7 (B) An employee is deemed to suffer injury for purposes of this
8 subdivision if the employer fails to provide accurate and complete
9 information as required by any one or more of items (1) to (9),
inclusive, of subdivision (a) and the employee cannot promptly and
easily determine from the wage statement alone one or more of the
following:

10 (i) The amount of the gross wages or net wages paid to the
11 employee during the pay period or any of the other
12 information required to be provided on the itemized wage
statement pursuant to items (2) to (4), inclusive, (6), and (9)
of subdivision (a).

13 (ii) Which deductions the employer made from gross wages to
14 determine the net wages paid to the employee during the
pay period. Nothing in this subdivision alters the ability of
the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

15 (iii) The name and address of the employer and, if the employer
16 is a farm labor contractor, as defined in subdivision (b) of
Section 1682, the name and address of the legal entity that
secured the services of the employer during the pay period.

17 (iv) The name of the employee and only the last four digits of
18 his or her social security number or an employee
identification number other than a social security number.

19 77. During the relevant time period, since and including January 1, 2012, California
20 Labor Code Section 1174(d) provided and provides:

21 Every person employing labor in this state shall . . . [k]ccp, at a central
22 location in the state . . . payroll records showing the hours worked daily by
23 and the wages paid to . . . employees employed at the respective plants or
establishments. These records shall be kept in accordance with rules
24 established for this purpose by the commission, but in any case shall be
kept on file for not less than three years. An employer shall not prohibit an
employee from maintaining a personal record of hours worked, or, if paid
25 on a piece-rate basis, piece-rate units earned.

26 78. Defendants have failed to provide timely, accurate itemized wage statements to the
27 Representative Plaintiffs and Class Members in accordance with California Labor Code Section
28 226. Representative Plaintiffs are informed and believe and, on that basis, allege that none of the

1 statements provided by Defendant accurately reflected accurate hours worked, gross wages earned,
 2 net wages earned, or the appropriate deductions of such Class Members. The wage statements also
 3 failed to identify the full name of the legal entity who employed them, as required by the statute.

4 79. Representative Plaintiffs seek to recover actual damages, costs, and attorneys' fees
 5 under these provisions on behalf of himself and on behalf of all Class Members.

6 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

7 **Fifth Cause of Action**
 8 **Failure to Produce Employment Records**
 9 **(California Labor Code §§ 226, 432, and 1198.5)**
 10 **(Against all Defendants)**

11 80. Representative Plaintiffs re-alleges and incorporate each and every allegation of the
 12 preceding paragraphs with the same force and effect as though fully set forth herein.

13 81. California Labor Code Section 226 states, in relevant part, that:

14 (b) An employer that is required by this code or any regulation adopted
 15 pursuant to this code to keep the information required by subdivision (a)
 16 shall afford current and former employees the right to inspect or copy
 17 records pertaining to their employment, upon reasonable request to the
 18 employer. The employer may take reasonable steps to ensure the identity
 19 of a current or former employee. If the employer provides copies of the
 20 records, the actual cost of reproduction may be charged to the current or
 21 former employee.

22 (c) An employer who receives a written or oral request to inspect or copy
 23 records pursuant to subdivision (b) pertaining to a current or former
 24 employee shall comply with the request as soon as practicable, but no later
 25 than 21 calendar days from the date of the request. A violation of this
 26 subdivision is an infraction. Impossibility of performance, not caused by
 27 or a result of a violation of law, shall be an affirmative defense for an
 28 employer in any action alleging a violation of this subdivision. An
 employer may designate the person to whom a request under this
 subdivision will be made....

(f) A failure by an employer to permit a current or former employee to
 inspect or copy records within the time set forth in subdivision (c) entitles
 the current or former employee or the Labor Commissioner to recover a
 seven-hundred-fifty-dollar (\$750) penalty from the employer....

(h) An employee may also bring an action for injunctive relief to ensure
 compliance with this section, and is entitled to an award of costs and
 reasonable attorney's fees.

82. Labor Code Section 432 states that "[i]f an employee or applicant signs any

1 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
2 instrument upon request."

3 83. California Labor Code Section 1198.5 states, in relevant part, that:

4
5 (a) Every current and former employee, or his or her representative, has
6 the right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee's performance or to any
grievance concerning the employee....

8 (b) (1) The employer shall make the contents of those personnel records
9 available for inspection to the current or former employee, or his or her
representative, at reasonable intervals and at reasonable times, but not later
10 than 30 calendar days from the date the employer receives a written
request, unless the current or former employee, or his or her
11 representative, and the employer agree in writing to a date beyond 30
calendar days to inspect the records, and the agreed-upon date does not
12 exceed 35 calendar days from the employer's receipt of the written
request. Upon a written request from a current or former employee, or his
or her representative, the employer shall also provide a copy of the
13 personnel records, at a charge not to exceed the actual cost of
reproduction, not later than 30 calendar days from the date the employer
14 receives the request, unless the current or former employee, or his or her
representative, and the employer agree in writing to a date beyond 30
15 calendar days to produce a copy of the records, as long as the agreed-upon
date does not exceed 35 calendar days from the employer's receipt of the
16 written request...

17 (k) If an employer fails to permit a current or former employee, or his or
her representative, to inspect or copy personnel records within the times
18 specified in this section, or times agreed to by mutual agreement as
provided in this section, the current or former employee or the Labor
19 Commissioner may recover a penalty of seven hundred fifty dollars (\$750)
from the employer...

20 (l) A current or former employee may also bring an action for injunctive
21 relief to obtain compliance with this section, and may recover costs and
reasonable attorney's fees in such an action.

22 84. On September 20, 2017 counsel for Plaintiffs counsel served a records request on
23 Defendants via certified mail requesting copies of the Plaintiffs' personnel records, including
24 payroll and timekeeping records and any records signed by the Plaintiffs, pursuant to Labor Code
25 sections 226(c), 432 and 1198.5. The September 20, 2017 records request included signed
26 authorizations from both Plaintiffs authorizing Defendants to release the records to their counsel in
27 this action.
28

1 to these laws, all of which are binding upon and burdensome on its competitors, engenders an
 2 unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
 3 set forth in California Business and Professions Code Section 17208.

4 93. Business and Professions Code Section 17203 provides that the Court may restore
 5 to any person in interest any money or property which may have been acquired by means of such
 6 unfair competition. As a direct and proximate result of the aforementioned acts, Representative
 7 Plaintiffs and Class Members were injured and suffered the loss of money in the amount of, inter
 8 alia, unpaid wages that they were otherwise entitled to receive. Representative Plaintiffs and Class
 9 Members are entitled to restitution pursuant to Business and Professions Code section 17203 and
 10 17208 for all wages unlawfully withheld from them as a result of Defendants' unlawful and unfair
 11 conduct.

12 94. Representative Plaintiffs' success in this action will enforce important rights
 13 affecting the public interest. Representative Plaintiffs and the Plaintiff Class seek, and are entitled
 14 to, injunctive relief as well as all other appropriate equitable remedies. Injunctive relief is
 15 necessary and appropriate to prevent Defendants from repeating the wrongful business practices
 16 alleged herein.

17 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

18 **Seventh Cause of Action**
 19 **Recovery under Private Attorneys General Act (PAGA)**
 20 **(California Labor Code § 2698, *et seq.*)**
 21 **(Against All Defendants)**

22 95. Plaintiffs Jose Diaz Hermosillo and Oscar Diaz Hermosillo re-allege and
 23 incorporate each and every allegation of the preceding paragraphs with the same force and effect as
 24 though fully set forth herein.

25 96. Plaintiffs, as aggrieved employees, bring this claim pursuant to California Labor
 26 Code sections 2698-2699 on behalf of themselves and all other current or former employees
 27 employed by Defendant as Davey Tree Surgery Company and/or The Davey Tree Expert Company
 28 in California at any time for which recovery is authorized under Labor Code sections 2698-2699, *et*
seq. Pursuant to California Labor Code Section 2699.3, on September 14, 2017, Representative

1 Plaintiffs submitted notice to the Labor and Workforce Development Agency through its website
2 of the specific provisions of the Labor Code that have been violated, including the facts and
3 theories to support those violations. Representative Plaintiffs served copies of the notice on the
4 Defendants via certified mail on September 13, 2017 and received return receipt confirming that
5 said notices were delivered on the Defendants. Representative Plaintiffs thus have complied with
6 the Private Attorneys General Act notice requirement as the 65-day time limit for a response has
7 passed with no response from the Labor and Workforce Development Agency notifying Plaintiffs
8 that the agency would investigate the claim.

9 97. As alleged above, Defendants have violated provisions of the California Labor
10 Code, including but not limited to failure to pay all wages owed, including overtime and double-
11 time, failure to provide timely duty free meal and rest periods or compensation for meal and rest
12 period violations, and failure to provide accurate wage statements. Representative Plaintiffs seek
13 recovery of unpaid wages resulting from said violations on behalf of themselves and all other
14 current or former employees employed by Defendants as Davey Tree Surgery Company and/or
15 The Davey Tree Expert Company in California at any time for which recovery is authorized under
16 California Labor Code sections 2698-2699.

17 98. Pursuant to California Labor Code Section 2699, Representative Plaintiffs also seek
18 recovery of all penalties for Defendants' above-described violations of the California Labor Code
19 that are available under PAGA. Such penalties for which Representative Plaintiffs now seek
20 recovery include, but are not limited to, those set forth in California Labor Code sections 1771 and
21 1774 (prevailing wages and associated penalties) and 558 (for causing the labor code violations
22 plead herein).

23 99. Representative Plaintiffs request an award of attorneys' fees and costs, including as
24 authorized under California Labor Code Section 2699.

25 Wherefore, Representative Plaintiffs pray for judgment as set forth below.

26 **RELIEF SOUGHT**

27 **WHEREFORE**, the Representative Plaintiffs, on behalf of themselves and the proposed
28 Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each

1 of them, jointly and separately, as follows:

2 1. That the Court declare, adjudge, and decree that this action is a proper class action
3 and certify the proposed class and/or any appropriate subclasses under California Code of Civil
4 Procedure Section 382;

5 2. That the Court declare, adjudge, and decree that Defendants violated the provisions
6 of the California Labor Code and the applicable California Industrial Welfare Commission Wage
7 Order(s) as to the Representative Plaintiffs and Class Members as alleged herein;

8 3. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
9 minimum, overtime, and double-time wage compensation (pursuant to California Labor Code
10 sections 510, 1194);

11 4. That the Court make an award to the Plaintiffs and Plaintiff Class of unpaid
12 statutory prevailing wage and per diem compensation (pursuant to California Labor Code sections
13 1771 & 1774);

14 5. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
15 at each employee's regular rate of compensation for each workday on which a meal period(s) was
16 not provided (pursuant to California Labor Code Section 226.7);

17 6. That the Court make an award to the Plaintiffs and Plaintiff Class of one hour of pay
18 at each employee's regular rate of compensation for each workday on which a rest period(s) was
19 not provided (pursuant to California Labor Code Section 226.7);

20 7. That the Court make an award to the Plaintiffs and Plaintiff Class of "waiting time"
21 penalties (pursuant to California Labor Code Section 203);

22 8. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
23 provide accurate wage statements (pursuant to Labor Code Section 226);

24 9. That the Court make an award to the Plaintiffs and Plaintiff Class for failure to
25 produce employment records upon request (pursuant to Labor Code sections 226 and 1198.5);

26 10. That the Court make an award to the Plaintiffs and Plaintiff Class of penalties,
27 pursuant to California Labor Code sections 2926-2927;

28 11. That the Court order Defendants to pay restitution to the Plaintiffs and Plaintiff

1 Class, pursuant to California Business and Professions Code sections 17200-17208;

2 12. That the Court enjoin Defendants, ordering them to cease and desist from unlawful
3 activities in violation of California Business and Professions Code Section 17200, *et seq.*;

4 13. That the Court order Defendants to pay penalties pursuant to the Private Attorneys
5 General Act, California Labor Code sections 2698-2699, *et seq.*;

6 14. For all other Orders, findings and determinations identified and sought in this
7 Complaint;

8 15. For interest on the amount of any and all economic losses, at the prevailing legal
9 rate;

10 16. For reasonable attorneys' fees, pursuant to California Labor Code sections 218.5,
11 226, 1194, 1198.5, 2699, *et. seq.* and/or California Code of Civil Procedure Section 1021.5; and;

12 17. For costs of suit and any and all such other relief as the Court deems just and
13 proper.

14 Dated: December 7, 2017

Respectfully submitted,

15
16 By:



17 Kevin Allen, Esq.
18 VELTON ZEGELMAN, PC
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DEMAND FOR JURY TRIAL

Representative Plaintiffs and the proposed Plaintiff Class hereby demand a jury trial for each cause of action for which they are entitled to a jury trial.

Dated: December 7, 2017

Respectfully submitted,

By:



Kevin Allen, Esq.
VELTON ZEGELMAN, PC

FIELD REPORT

ONE LEGAL LLC



ONE LEGAL FIELD REPORT FOR ORDER NO.: 11573196 One Legal Southern CA Process Service

To update the status of your order, please call toll free 877-737-8322 ext: 3990 or fax
the Field Report to 213-617-4717

Field Instructions

Case #: 17CV320135

Hearing Date:

Case Information

Court Name: Santa Clara - First Street

Case Title: Jose Diaz Hermosillo, et al. vs. Davey Tree Surgery Company, et al.

Documents: Summons, Complaint, Civil Case Cover Sheet

Docs: 3

Pgs: 29

Service Level: Standard

Due Date: 12/14/2017

Assignment Details

Last Day to Serve: 12/14/2017

Status Due By: 12/20/2017

Last Day to S/S:

Special Instructions:

Served:

DAVEY TREE SURGERY COMPANY, an Ohio Corporati

Served Information

Agent for Service: CT Corporation System

Physical Desc.:

Race:

Sex:

Age:

Height:

Weight:

Hair:

Eyes:

Marks:

Address Information

(1)Business: CT Corporation System 818 West Seventh Street, 930, Los Angeles, CA 90017

Server Required to Complete This Section (below)

SOP	<input type="checkbox"/> Personal <input type="checkbox"/> Sub-Serve <input type="checkbox"/> Post & Mail <input type="checkbox"/> Not Found <input type="checkbox"/> Locate <input type="checkbox"/> Cancel & Return			
	MailedBy: <input type="checkbox"/> Agent <input type="checkbox"/> One Legal Date:			
Date	Time	Loc	Comments	Amount
Service Date/time:				
Served To:				
Title/Relationship:				
Server:	Jimmy Lizama		Server Phone #:	213-216-2132
			Server Mobile #:	213-216-2132